

FILED  
U.S. DISTRICT COURT  
2006 AUG -9 P 1:17  
DISTRICT OF UTAH  
BY: STEPHEN C. DLEPK

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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, NORTHERN DIVISION

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THE PROCTER & GAMBLE  
DISTRIBUTING COMPANY,

Plaintiff and Counterclaim Defendant,

vs.

TRANSWOOD, INC.,

Defendant and Counterclaimant.

**ORDER AUTHORIZING  
DISBURSEMENT OF FUNDS**

Civil No. 1:01CV0053B  
Judge Dee V. Benson

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This Court, having received the Stipulation and Motion for Order Authorizing Disbursement of Funds executed by counsel for all parties, and for good cause appearing, hereby **ORDERS** as follows:

1. That certain account established and held at U.S. Bank, 170 South Main Street, #600, Salt Lake City, Utah 84101, Account Number 353103320274 made subject to this Court's Order Regarding Deposit of Funds dated July 7, 2005 (the "**First Account**"), is hereby ordered to be disbursed in its entirety to The Procter & Gamble Distributing Company ("**P&G**") by check or wire transfer as P&G separately instructs U.S. Bank.

2. The judicial lien imposed by the Order of July 7, 2005 is hereby released, and the Writ of Garnishment and Seizure authorized by the same Order is hereby dissolved, such that

the lien and writ shall not interfere with or hinder U.S. Bank's ability to disburse the First Account to P&G.

3. That certain account established and held at U.S. Bank, 170 South Main Street, #600, Salt Lake City, Utah 84101, Account Number 353103338086, made subject to this Court's Order Regarding Deposit of Funds dated May 15, 2006 (the "**Second Account**"), is hereby ordered to be disbursed in its entirety to TransWood ("**TransWood**") by check or wire transfer as TransWood separately instructs U.S. Bank.

4. The judicial lien imposed by the Order of May 15, 2006 is hereby released, and the Writ of Garnishment and Seizure authorized by the same Order is hereby dissolved, such that the lien and writ shall not interfere with or hinder U.S. Bank's ability to disburse the Second Account to TransWood.

5. The Court further finds that once this Order is entered and carried out there are no matters pending before the Court in this action, since the Court previously entered final Judgments that are the subject of appeals to the Tenth Circuit. Accordingly, all matters in this proceeding are now hereby resolved without the need for an order of dismissal.

IT IS SO ORDERED.

DATED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:



HONORABLE DEE V. BENSON  
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO FORM:

RICHARDS, BRANDT, MILLER  
& NELSON

/s/ Matthew C. Barneck  
MATTHEW C. BARNECK  
*Attorneys for TransWood, Inc.*

SNELL & WILMER

/s/ Todd M. Shaughnessy  
TODD M. SHAUGHNESSY  
*(Signed copy of document bearing signature of  
Todd M. Shaughnessy is being maintained in the  
office of the Filing Attorney)  
Attorneys for The Procter & Gamble  
Distributing Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 8, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Todd M. Shaughnessy, Esq.  
SNELL & WILMER  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, UT 84101-1004  
*Attorneys for Plaintiff*

Matthew C. Barneck, Esq.  
RICHARDS, BRANDT, MILLER & NELSON  
50 South Main Street, Suite 700  
P.O. Box 2465  
Salt Lake City, UT 84110  
*Attorneys for Defendant*

/s/ Matthew C. Barneck

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FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

# UNITED STATES DISTRICT COURT

AUG 09 2006  
BY Utah MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

Central

District of

UNITED STATES OF AMERICA

V.

Judi Lynette Talbot

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:04CR000023-001

USM Number: 11603-081

Michael J. Boyle

Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) I-Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21USC§841 (a)(1)	Possession of 5 Grams or More of Actual Methamphetamine with Intent to Distribute		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/7/2006

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

Date

August 7, 2006

DEFENDANT: Judi Lynette Talbot  
CASE NUMBER: DUTX 2:04CR000023-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 months. The defendant shall receive credit for time served.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Women's Federal Correctional Center at Dublin, CA. The Court also recommends that the defendant participates and completes the 500 hour drug re-hab program.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 9/6/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Judi Lynette Talbot  
CASE NUMBER: DUTX 2:04CR000023-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Judi Lynette Talbot

CASE NUMBER: DUTX 2:04CR000023-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115.00 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order. Special assessment fee of \$100.00, payable forthwith.



DEFENDANT: Judi Lynette Talbot  
CASE NUMBER: DUTX 2:04CR000023-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ 0.00	\$ 0.00
--------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Judi Lynette Talbot  
CASE NUMBER: DUTX 2:04CR000023-001

## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

BRETT L. TOLMAN, United States Attorney (No. 8821)  
JOHN W. HUBER, Assistant United States Attorney (No. 7226)  
Attorneys for the United States of America  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

**RECEIVED** FILED  
U.S. DISTRICT COURT  
AUG 08 2006 2006 AUG -9 P 2:12  
OFFICE OF  
JUDGE TENA CAMPBELL  
BY: DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	:	Case No. 1:05 CR 0105 TC
Plaintiff,	:	ORDER SETTING TRIAL DATE
v.	:	
ALFONSO LOPEZ-BARONE,	:	JUDGE TENA CAMPBELL
Defendant.	:	
	:	

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The above-entitled action came on for status hearing on August 1, 2006. Defendant was present with counsel, Ron Fujino, and the United States was represented. Counsel for defendant indicated difficulties in the attorney-client relationship that have significantly hindered trial preparation efforts. Moreover, the defendant represented that his family had retained new counsel on his behalf, although the Court noted that there had been no notice of new counsel filed. After discussion, the Court concluded that Mr. Fujino shall continue as counsel of record for the time being, but continued the trial date. Additionally, the Court ruled on the defendant's

motion to dismiss upon reviewing the parties' briefs and considering oral argument.

Accordingly, the following findings are made and entered:

1. A three-day trial is set to begin September 25, 2006.
2. The trial date appears appropriate based upon the defendant's decision to begin to cooperate with counsel after experiencing communication difficulties in the attorney-client relationship. Moreover, the new trial date is appropriate in light of the complexity of the issues involved, the parties' need for time to adequately prepare for trial, and the narrowing of issues for trial.
3. Accordingly, the Court finds that the ends of justice served by continuing the trial date outweigh the interests of the public and the Defendant in a speedy trial.
4. Any period of delay until the rescheduled trial date shall be excluded from the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(8)(A).
5. Further, the Court denies the defendant's motion to dismiss for the reasons outlined in the United States' written response to the motion to dismiss.

Dated this 9 day of August, 2006.

BY THE COURT:

  
Tena Campbell  
DISTRICT COURT JUDGE

# United States District Court District of Utah

FILED  
U.S. DISTRICT COURT

2006 AUG -9 P 2:12

**UNITED STATES OF AMERICA**

**vs.**

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

DISTRICT OF UTAH

**Raul Bernabe-Najar**

aka Raul Bernabe

aka Richard Flores

Case Number: DUTX 1:06CR000010-001

Plaintiff Attorney: **Benson, Eric**

Defendant Attorney: **Garcia, Carlos**

Atty: CJA \_\_\_ Ret \_\_\_ FPD X

Defendant's Soc. Sec. No.: XXX-XX-6387

Defendant's Date of Birth: 1960

Defendant's USM No.: 13279-081

Defendant's Residence Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Country \_\_\_\_\_

08/01/2006

Date of Imposition of Sentence

Defendant's Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Country \_\_\_\_\_

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP 4/24/2006 Verdict \_\_\_\_\_

**One of the Indictment**

**Title & Section**

8 USC § 1326

**Nature of Offense**

Reentry of Previously Removed Alien

**Count**

**Number(s)**

1

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

## SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

**24 Months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of

**36 Months**

☐ The defendant is placed on Probation for a period of \_\_\_\_\_  
The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☒ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall not re-enter the United States illegally.
2. Pursuant to 42 USC 14135a and 10 USC 1565, as authorized in Section 3 of the DNA Analysis Backlog Elimination Act of 2000 and Section 203 of the Justice for All Act of 2004, the defendant shall submit to the collection of a DNA sample at the direction of BOP or the USPO.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ NONE , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00 , payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.



**RECOMMENDATION**

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**The Court recommends the defendant serve his sentence at FCI Lompoc, CA.**

**CUSTODY/SURRENDER**

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

8-9-2006

Tena Campbell

Tena Campbell

United States District Judge

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 10 2006

MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERROD DON HENDERSON,

Defendant.

**ORDER GRANTING EXTENSION OF  
TIME FOR FILING OF MOTIONS AND  
FOR CONTINUANCE OF TRIAL**

Case No. 1:06CR057

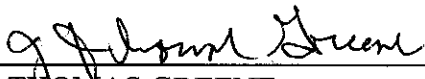
Based upon the motion of Defendant, and good cause appearing;

IT IS HEREBY ORDERED that Defendant has up to and including September 1, 2006 to file motions in the above-titled matter. FURTHER ORDERED that the trial date previously set for August 29, 2006, is continued until **September 22, 2006, at 10:00 a.m.**

Pursuant to the Speedy Trial Act, 18 U.S.C. § 3161 et seq., the Court finds that the ends of justice served by a continuance in this case outweigh the best interest of the public and the Defendant in a speedy trial. It appears that the continuance is necessary in order to afford counsel for the Defendant, who is newly appointed, time to receive and analyze the discovery materials in the case and to determine what motions need to be filed to assure Defendant received

a fair trial. Accordingly, the time between August 29, 2006, and September 22, 2006, is excluded from computation pursuant to the Speedy Trial Act.

DATED this 24 day of August, 2006.

  
\_\_\_\_\_  
J. THOMAS GREENE  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

FILED  
S DISTRICT COURT

2006 AUG -8 A 8:42

CHARLENE HECKERT,  
Plaintiff,

vs.

JO ANNE B. BARNHART,  
Commissioner of Social  
Security,  
Defendant.

**SCHEDULING ORDER**

Case No. 1:06-CV-16-TC

DISTRICT OF UTAH

BY: DEPUTY CLERK

The Court received the parties' Joint Statement on August 2, 2006. For the reasons set forth in the Joint Statement, the following is the new briefing schedule:

**PLAINTIFF:** September 28, 2006

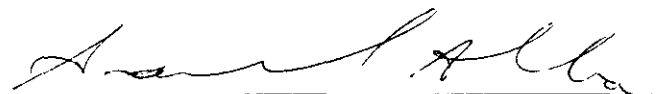
**COMMISSIONER:** October 30, 2006

**PLAINTIFF'S REPLY (if any):** November 13, 2006

So ordered.

DATED this 7<sup>th</sup> day of August, 2006.

BY THE COURT:



Samuel Alba  
United States Chief Magistrate Judge

Bentley J. Tolk (6665)  
PARR WADDOUPS BROWN GEE & LOVELESS  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111  
Telephone: (801) 532-7840  
Facsimile: (801) 532-7750

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG - 9 2006

BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

Attorneys for Defendants The Kroger Co.  
and the Kroger Co. Benefits Plan

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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH, NORTHERN DIVISION**

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CAROLE R. WHITE,

Plaintiff,

vs.

THE KROGER CO. and THE KROGER  
CO. BENEFITS PLAN,

Defendants.

**ORDER FOR EXTENSION  
OF TIME**

Case No. 1:06-CV-00080 PGC

Judge Paul G. Cassell

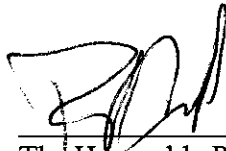
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Based upon the Stipulated Motion for Extension of Time of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants The Kroger Co. and the Kroger Co. Benefits Plan have an extension through and including August 23, 2006 to answer or otherwise respond to the July 13, 2006 Complaint in this matter.

MADE AND ENTERED this 9th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Paul G. Cassell', written over a horizontal line.

The Honorable Paul G. Cassell  
U.S. District Court Judge

APPROVED AS TO FORM AND CONTENT:

BRIAN S. KING, ATTORNEY AT LAW

By: /s/ Brian S. King  
Brian S. King  
James L. Harris, Jr.  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ORDER FOR  
EXTENSION OF TIME** was served on the 8<sup>th</sup> day of August, 2006 via electronic service on  
the following:

Brian S. King  
James L. Harris, Jr.  
BRIAN S. KING, ATTORNEY AT LAW  
336 South 300 East, Suite 200  
Salt Lake City, Utah 84111

/s/ Bentley J. Tolk



# United States District Court

## District of Utah

FILED  
U.S. DISTRICT COURT

2006 AUG -9 P 2:12

**UNITED STATES OF AMERICA**

vs.

**Michael Longshaw**

aka "Mikey"

**(For Revocation of Probation or Supervised Release)**

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:02-CR-00626-001-TC**

Plaintiff Attorney: **Kevin Sundwall, AUSA**

Defendant Attorney: **Wendy Lewis, Esq.**

Atty: CJA \_\_\_ Ret \_\_\_ FPD **X**

Defendant's Soc. Sec. No.: **XXX-XX-4307**

Defendant's Date of Birth: **1982**

**08/03/2006**

Date of Imposition of Sentence

Defendant's USM No.: **09880-081**

Defendant's Residence Address:

Defendant's Mailing Address:

Country

Country

THE DEFENDANT:

COP

Verdict

☒ admitted to allegation(s)

**1, 2, 3 and 4 of the Petition**

☐ pleaded nolo contendere to allegation(s)  
which was accepted by the court.

☐ was found guilty as to allegation(s)

**Violation Number**

**Nature of Violation**

**Date Violation  
Occurred**

- |    |   |            |
|----|---|------------|
| 1. | On 01/24/2006, in Salt Lake City, Utah, the defendant submitted a presumptive positive urinalysis for amphetamine and marijuana, which was sent to the lab for confirmation.                                      | 01/24/2006 |
| 2. | On 01/31/2006, in Salt Lake City, Utah, the defendant submitted a presumptive positive urinalysis for amphetamine and marijuana, which was sent to the lab for confirmation.                                      | 01/31/2006 |
| 3. | On 02/02/2006, in Salt Lake City, Utah, the defendant admitted to his USPO that he has been using methamphetamine daily since our last meeting on 01/26/2006, and was currently under the influence of this drug. | 02/02/2006 |
| 4. | On 02/02/2006, in Salt Lake City, Utah, the defendant failed to report to his USPO as instructed on 02/02/2006.   | 02/02/2006 |

☐ The defendant has been found not guilty on count(s)

☐ Count(s) (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **3 months, with credit for time served**

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Upon release from confinement, the defendant shall be placed on supervised release for a term of **24 months**

---

- ☐ The defendant is placed on Probation for a period of \_\_\_\_\_.  
The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall reside in a community treatment center for a period of 120 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment or other approved leave as deemed appropriate by the probation office or community treatment center.
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
3. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan, as directed by the probation office, and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
4. The defendant shall participate in a mental health treatment program under a copayment plan, as directed by the probation office, take any mental health medications as prescribed.
5. The defendant shall not be a member of a gang nor associate with any known gang member.
6. The defendant shall not possess materials which give evidence of gang involvement or activity, nor shall he associate with any convicted or any in known drug abuser.
7. The defendant shall maintain full-time, verifiable employment, or be actively seeking employment, participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.
8. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
9. Pursuant to 42 U.S.C. § 14135a and 10 U.S.C. § 1565, as authorized in Section 3 of the DNA Analysis Backlog Elimination Act of 2000 and Section 203 of the Justice for All Act of 2004, the defendant shall submit to the collection of a DNA sample at the direction of BOP or the United States Probation Office.

**CRIMINAL MONETARY PENALTIES**

**FINE**

The defendant shall pay a fine in the amount of \$ No fine imposed., payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
No fine imposed.

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

**RESTITUTION**

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:  
\_\_\_\_\_
- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

**SPECIAL ASSESSMENT**

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☐ forthwith.

☒ The Special Assessment Fee is reinstated, which was originally imposed on 01/27/2003.

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

**PRESENTENCE REPORT/OBJECTIONS**

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

**RECOMMENDATION**

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**CUSTODY/SURRENDER**

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE: 8-9-2006

Tena Campbell  
Tena Campbell  
United States District Judge

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the District of Utah

**Request and Order for Modifying Conditions of Supervision  
With Consent of the Offender**

(Waiver of hearing attached)

Name of Offender: **John Insixiengmy**

Docket Number: **2:02-CR-00734-001-DB**

Name of Sentencing Judicial Officer:

**Honorable Dee Benson  
Chief United States District Judge**

Date of Original Sentence: **May 27, 2003**

Original Offense: **User of Controlled Substance in Possession of a Firearm**

Original Sentence: **15 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **October 8, 2003**

**PETITIONING THE COURT**

☒ To modify the conditions of supervision as follows:

*The order requiring the defendant to participate in a home confinement/electronic monitoring program is vacated. The defendant shall reside in a community treatment center until October 7, 2006, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.*

**CAUSE**

On June 13, 2006, due to technical noncompliance (failure to submit to drug/alcohol testing and being terminated unsuccessfully from substance abuse treatment) the defendant's conditions were modified, and he was ordered to participate in a home confinement program until October 7, 2006, which includes electronic monitoring. The defendant has continued to be noncompliant in that on June 25, 2006; July 10, 2006; and August 1, 2006, he violated his electronic monitoring curfew. Additionally, on July 18, 2006, and August 7, 2006, he failed to submit to drug/alcohol testing as directed by the United States Probation Office.

Placement at the community treatment center will provide a higher level of supervision. A period of incarceration is not being pursued, because the defendant does not appear to be an immediate danger to the community. The defendant's term of supervised release is scheduled to expire on October 7, 2006.

I declare under penalty of perjury that the foregoing is true and correct

*Shelley Mangum*

Shelley Mangum  
United States Probation Officer  
August 9, 2006

**THE COURT ORDERS:**

- ☐ The modification of conditions as noted above
- ☐ No action
- ☐ Other



Honorable Dee Benson  
Chief United States District Judge

Date: 8-9-2006

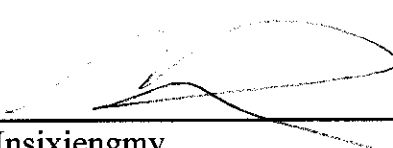
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
PROBATION AND PRETRIAL SERVICES OFFICEWAIVER OF RIGHT TO HEARING PRIOR TO  
MODIFICATION OF CONDITIONS OF SUPERVISION

I have been advised by United States Probation Officer Shelley Mangum that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:02-CR-00734. The modification would be:

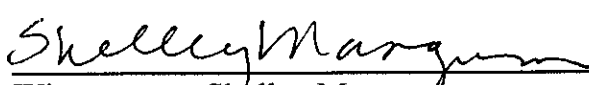
***The defendant shall reside in a community treatment center until October 7, 2006, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.***

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

  
\_\_\_\_\_  
John Insixiengmy

08-09-06  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Witness: Shelley Mangum  
United States Probation Officer



FILED  
U.S. DISTRICT COURT  
2006 AUG -9 P 1:17

CLIFFORD MCQUARRIE  
JUDGE CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CLIFFORD MCQUARRIE, Individually  
and On Behalf of All Others Similarly  
Situating,

Plaintiffs,

v.

RICHARD D. SIMON and ALBAN B.  
LANG,

Defendants.

Case No: 2:02CV1028

Judge: Honorable Dee Benson

~~PROPOSED~~ ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT AND PROVIDING  
FOR NOTICE AND HEARING

1  
2 WHEREAS, a class action entitled McQuarrie v. Simon, et al., Case No: 2:02CV1028  
3 (the "Litigation" or "Action") is pending before the Court;

4 WHEREAS, the parties having made application, pursuant to Federal Rule of Civil  
5 Procedure 23(e), for an order preliminarily approving the settlement of the Action, in  
6 accordance with a Stipulation of Settlement dated as of June 6, 2006 (the "Stipulation")  
7 which, together with the Exhibits annexed thereto sets forth the terms and conditions for a  
8 proposed settlement of the Litigation and for dismissal of the Litigation with prejudice upon  
9 the terms and conditions set forth therein; and the Court having read and considered the  
10 Stipulation and the Exhibits annexed thereto;

11 WHEREAS, all defined terms contained herein shall have the same meanings as set  
12 forth in the Stipulation.  
13

14  
15 NOW, THEREFORE, IT IS HEREBY ORDERED:  
16

17 1. The Court preliminarily approves the Stipulation and the Settlement set forth  
18 therein, subject to further consideration and final approval at the Settlement Hearing  
19 described below.

20 2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court  
21 preliminarily certifies, for purposes of effectuating this Settlement, a Settlement Class of all  
22 Person who purchased, sold, or otherwise acquired or disposed of shares of Simon  
23 Transportation common stock during the period of July 13, 1998 through and including  
24 January 14, 2002.

25 3. A hearing (the "Settlement Hearing") shall be held before this Court on  
26 December 5, 2006, at 2:30 p.m., at the United States District Court for the District of Utah,  
27 150 Frank E. Moss United States Courthouse, 350 South Main Street, Salt Lake City, UT  
28

1 84101, to determine whether the proposed Settlement of the Action on the terms and  
2 conditions provided for in the Stipulation is fair, just, reasonable, and adequate to each of  
3 the Settling Parties and the Settlement Class and should be approved by the Court; whether  
4 a Final Judgment and Order of Dismissal With Prejudice as defined in ¶1.10 of the  
5 Stipulation should be entered herein; whether the proposed Plan of Allocation should be  
6 approved; and to determine the amount of fees and expenses that should be awarded to Lead  
7 Plaintiffs' Counsel.

8  
9 4. The Court approves, as to form and content, the Notice of Pendency and  
10 Settlement of Class Action and Settlement Hearing Thereon (the "Notice"), the Proof of  
11 Claim and Release form (the "Proof of Claim"), and Publication Notice of Proposed  
12 Settlement (the "Publication Notice") annexed as Exhibits A-1, A-2 and A-3 hereto,  
13 respectively, and finds that mailing and distribution of the Notice and publication of the  
14 Publication Notice substantially in the manner and form set forth in ¶¶5-6 of this Order meet  
15 the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best  
16 notice practicable under the circumstances and shall constitute due and sufficient notice to  
17 all Persons entitled thereto.

18 5. Lead Plaintiffs' Counsel are hereby authorized to retain The Garden City  
19 Group, Inc. (the "Claims Administrator") to act as escrow agent for the Settlement Fund  
20 ("Escrow Agent") and to supervise and administer the notice procedure as well as the  
21 processing of claims as more fully set forth below:

22 a. Not later than fourteen (14) days after the date of this Order (the "Notice  
23 Date"), Lead Plaintiffs' Counsel shall cause a copy of the Notice and the Proof of Claim,  
24 substantially in the form annexed hereto as Exhibits A-1 and A-2, to be mailed by first class  
25 mail to all members of the Settlement Class who can be identified with reasonable effort;

26  
27 b. Not later than twenty-one (21) days after the Notice Date, Lead Plaintiffs'  
28 Counsel shall cause the Publication Notice to be published once in the national edition of

1 the Investor's Business Daily; and

2 c. At least seven (7) days prior to the Settlement Hearing, Lead Plaintiffs'  
3 Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or  
4 declaration, of such mailing and publishing.

5 6. Nominees who held common stock of Simon Transportation purchased during  
6 the period beginning July 13, 1998, through and including January 14, 2002 (the "Settlement  
7 Class Period"), shall send the Notice and the Proof of Claim to the beneficial owners of such  
8 Simon Transportation stock within ten (10) days after receipt thereof, or send a list of the  
9 names and addresses of such beneficial owners to the Claims Administrator within ten (10)  
10 days of receipt thereof in which event the Claims Administrator shall promptly mail the  
11 Notice and Proof of Claim to such beneficial owners.  
12

13 7. All members of the Settlement Class who do not submit a valid and timely  
14 request for exclusion in accordance with ¶11 below shall be bound by all determinations and  
15 judgments in the Action concerning the Settlement, whether favorable or unfavorable to the  
16 Settlement Class.

17 8. Members of the Settlement Class who wish to participate in the Settlement shall  
18 complete and submit Proof of Claim forms in accordance with the instructions contained  
19 therein. Unless the Court orders otherwise, all Proof of Claim forms must be submitted no  
20 later than 180 days after the date of this Order. Any Settlement Class Member who does not  
21 timely submit a Proof of Claim within the time provided for, shall be barred from sharing  
22 in the distribution of the proceeds of the Net Settlement Fund, and shall also be bound by  
23 all determinations and judgments in the Action concerning the Settlement, whether  
24 favorable or unfavorable to the Settlement Class, unless otherwise ordered by the Court.

25 9. Settlement Class Members may enter an appearance in the Action, at their own  
26 expense, individually or through counsel of their own choice. If they do not enter an  
27 appearance, they will be represented by Lead Plaintiffs' Counsel.  
28

1 10. Pending final determination of whether the Settlement should be approved,  
2 neither the Lead Plaintiffs nor any Settlement Class Member, either directly,  
3 representatively, or in any other capacity, shall commence or prosecute against any of the  
4 Released Persons, any action or proceeding in any court or tribunal asserting any of the  
5 Released Claims.

6 11. Any Person falling within the definition of the Settlement Class, may, upon  
7 request, be excluded from the Settlement Class. Any such Person must submit to the Claims  
8 Administrator a request for exclusion ("Request for Exclusion"), received no later than  
9 twenty-one (21) days prior to the date of the Settlement Hearing. A Request for Exclusion  
10 must state: (a) the name, address, and telephone number of the Person requesting exclusion;  
11 (b) the Person's purchases, sales, or other acquisition or disposition of Simon Transportation  
12 common stock made during the Settlement Class Period, including the dates, the number of  
13 shares, and price paid or received per share for each such purchase or sale; and (c) that the  
14 Person wishes to be excluded from the Settlement Class. All Persons who submit valid and  
15 timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights  
16 under the Stipulation, shall not share in the distribution of the Net Settlement Fund, and  
17 shall not be bound by the Stipulation or the Final Judgment.

18 12. Any Settlement Class Member may appear and show cause (if he, she or it has  
19 any): (1) why the proposed Settlement of the Action should or should not be approved as  
20 fair, just, reasonable and adequate; (2) why a Final Judgment and Order of Dismissal With  
21 Prejudice should or should not be entered thereon; (3) why the Plan of Allocation should or  
22 should not be approved; and/or (4) why attorneys' fees and expenses should or should not  
23 be awarded to Lead Plaintiffs' Counsel. However, no Settlement Class Member or any other  
24 Person shall be heard or entitled to contest the approval of the terms and conditions of the  
25 proposed Settlement, or, if approved, the Final Judgment and Order of Dismissal With  
26 Prejudice to be entered thereon approving the same, or the order approving the Plan of  
27  
28

1 Allocation, or the attorneys' fees and expenses to be awarded to Lead Plaintiffs' Counsel  
2 unless that Person has (a) delivered by hand or sent by overnight or first-class mail written  
3 objections and copies of any papers and briefs such that they are received on or before  
4 twenty-one (21) days before the date of the Settlement Hearing, to Lionel Z. Glancy, Glancy  
5 Binkow & Goldberg LLP, 1801 Avenue of the Stars, Suite 311, Los Angeles, CA 90067,  
6 and Kenneth J. Catanzarite, Catanzarite Law Corporation, 2331 W. Lincoln Ave., Anaheim,  
7 CA 92801, and Lloyd Winawer, Wilson, Sonsini, Goodrich & Rosati, 650 Page Mill Road,  
8 Palo Alto, CA 94304, and (b) filed said objections, papers and briefs with the Clerk of the  
9 United States District Court for the District of Utah, 150 Frank E. Moss United States  
10 Courthouse, 350 South Main Street, Salt Lake City, UT 84101, on or before twenty-one (21)  
11 calendar days before the date of the Settlement Hearing. Any Settlement Class Member who  
12 does not make his, her or its objection in the manner provided herein shall be deemed to  
13 have waived such objection and shall forever be foreclosed from making any objection to  
14 the fairness or adequacy of the proposed Settlement as incorporated in the Stipulation, to the  
15 Final Judgment and Order of Dismissal With Prejudice, to the Plan of Allocation, and/or to  
16 the award of attorneys' fees and reimbursement of expenses to Lead Plaintiffs' Counsel,  
17 unless otherwise ordered by the Court.

18  
19 13. The passage of title and ownership of the Settlement Fund to the Escrow Agent  
20 in accordance with the terms and obligations of the Stipulation is approved. No Person that  
21 is not a member of the Settlement Class, a Lead Plaintiff or Lead Plaintiffs' Counsel shall  
22 have any right to any portion of, or in the distribution of, the Settlement Fund unless  
23 otherwise ordered by the Court or otherwise provided in the Stipulation.

24 14. All funds held by the Escrow Agent shall be deemed and considered to be *in*  
25 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until  
26 such time as such funds shall be distributed pursuant to the Stipulation and/or further  
27 order(s) of the Court.  
28

1 15. All papers in support of the Settlement, the Plan of Allocation and the  
2 application by Lead Plaintiffs' Counsel for attorneys' fees or reimbursement of expenses  
3 shall be filed and served seven (7) calendar days prior to the Settlement Hearing.

4 16. Neither Defendants nor Defendants' Counsel shall have any responsibility or  
5 liability for the Plan of Allocation or any application for attorneys' fees or reimbursement  
6 of expenses submitted by Lead Plaintiffs' Counsel, and such matters will be considered  
7 separately from the fairness, reasonableness and adequacy of the Settlement.

8 17. At or after the Settlement Hearing, the Court shall determine whether the Plan  
9 of Allocation proposed by Plaintiffs' Lead Counsel, and any application for attorneys' fees  
10 or reimbursement of expenses shall be approved.

11 18. All reasonable expenses incurred in identifying and notifying members of the  
12 Settlement Class, as well as administering the Gross Settlement Fund, shall be paid as set  
13 forth in the Stipulation. In the event the Settlement is not approved by the Court, or  
14 otherwise fails to become effective, neither the Lead Plaintiffs nor any of Plaintiffs' counsel  
15 shall have any obligation to repay any amounts actually and properly disbursed from or  
16 chargeable to the Gross Settlement Fund to pay Taxes, Tax Expenses, or costs and expenses  
17 reasonably and actually incurred in connection with settlement administration in accordance  
18 with ¶5.2 (i) & (ii) of the Stipulation.

19 19. Neither the Stipulation, nor any of its terms or provisions, nor any of the  
20 negotiations or proceedings connected with it, shall be construed as: (1) an admission or  
21 concession by Defendants of the truth of any of the allegations in the Litigation, or of any  
22 liability, fault, or wrongdoing of any kind; or (2) an admission or concession by Lead  
23 Plaintiffs and/or the Settlement Class of any infirmity in the claims asserted in the  
24 Litigation.

25 20. The Court reserves the right to adjourn the date of the Settlement Hearing  
26 without further notice to the members of the Settlement Class, and retains jurisdiction to  
27  
28

1 consider all further applications arising out of or connected with the proposed Settlement.  
2 The Court may approve the Settlement, with such modifications as may be agreed to by the  
3 Settling Parties, if appropriate, without further notice to the Settlement Class.  
4

5  
6 Dated: 9<sup>th</sup> day of August, 2006  
7

  
HONORABLE DEE BENSON  
UNITED STATES DISTRICT COURT JUDGE



**PROOF OF SERVICE BY MAIL**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067.

On July 25, 2006, I served the following:

**1 JOINT STIPULATION TO CONTINUE DATE OF FINAL SETTLEMENT  
HEARING; EXHIBIT A: [PROPOSED] ORDER**

on the parties shown below via overnight delivery by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in an official overnight delivery drop box at Los Angeles, California.

Lloyd Winawer  
Wilson, Sonsini, Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, California 94304  
Telephone: (650) 496-4387  
Facsimile: (650) 565-5100

Executed on July 25, 2006, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

S/Daniel C. Rann  
Daniel C. Rann

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

\* \* \* \* \*

TELECOM ITALIA S.p.A,

)

Case No. 2:03-cv-00641

FILED  
U.S. DISTRICT COURT  
2006 AUG 9 P 2:12

Plaintiff,

)

DISTRICT OF UTAH

vs.

)

BY: DEPUTY CLERK

ORDER

L-3 COMMUNICATIONS CORP.,  
ET AL.,

)

Defendants.

)

\* \* \* \* \*

The Court having considered Defendants' Declaration of Attorneys' Fees, as well as the supporting and opposing pleadings and being informed of the relevant facts and law, concludes that Defendants, for the reasons set forth in their pleadings, are entitled to an award of their fees in the amount of \$6,575.50.

**IT IS SO ORDERED.**

DATED this 9th day of August, 2006.

BY THE COURT:



DAVID SAM  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT

RECEIVED

2006 AUG -9 P 2:12

AUG 09 2006

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DISTRICT OF UTAH OFFICE OF  
JUDGE TENA CAMPBELL  
IN THE UNITED STATES DISTRICT COURT  
STATE OF UTAH, CENTRAL DIVISION


---

THE UNITED STATES OF AMERICA,	)	
	)	ORDER GRANTING DEFENSE COUNSEL'S
Plaintiff,	)	MOTION FOR THREE DAY EXTENSION
vs.	)	Case No. 2:04-CR-178 TC
	)	
CLIFFORD PERRY,	)	JUDGE TENA CAMPBELL
	)	
Defendant.	)	
	)	

---

Based on the Motion of defense counsel, the stipulation of the defendant and good cause appearing, defense counsel's request for a three day extension of time up to and including August 10<sup>th</sup> in which to file her response to the government's opposition to the suppression motion is granted. The due date of the response is August 10, 2006.

DATED this 9 of August, 2006.

  
HONORABLE JUDGE TENA CAMPBELL  
UNITED STATES DISTRICT COURT JUDGE

Peter H. Christensen, #5453  
Byron G. Martin, #8824  
Ryan P. Atkinson, #10673  
**STRONG & HANNI**  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84180  
Telephone: (801) 532-7080  
Facsimile: (801) 323-2037

*Attorneys for Defendant Hercules Manufacturing Company*

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
AUG 10 2006  
BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
AUG 10 2006  
BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

BRIAN ADAMS,

Plaintiff,

v.

HERCULES MANUFACTURING CO.,  
INC., and JOSEPHINE HURT DAVIS,  
surviving spouse of DONALD C. DAVIS,

Defendants.

**ORDER**

Civil No. 2:04CV00396DB

Judge Dee Benson

Magistrate Judge David Nuffer

---

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, Defendant Hercules Manufacturing Company ("**Hercules**"), and per the agreement between Hercules and Defendant Donald Davis ("**Davis**"), the Court hereby enlarges the time for Hercules to reply to Davis' Memorandum in Opposition to Hercules' Motion for Summary Judgment on Hercules' Cross-claim to August 11, 2006.

DATED this 10<sup>th</sup> day of April, 2006.

BY THE COURT:

By Dee Benson  
Judge Dee V. Benson

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

BILLY ROHWEDDER,	)	
	)	
Plaintiff,	)	Case No. 2:04-CV-438-DB
	)	
v.	)	District Judge Dee Benson
	)	
CLINT FRIEL et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge Samuel Alba

---

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
AUG 10 2006  
BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

Plaintiff/inmate, Billy Rohwedder, has a civil rights complaint pending. See 42 U.S.C.S. § 1983 (2006). On May 11, 2006, this Court ordered Plaintiff to within thirty days show cause why his case should not be dismissed for failure to prosecute. See Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003). The order was mailed to Plaintiff and returned to the Court, marked, "RETURN TO SENDER . . . Unknown Addressee." The Court has not heard from Plaintiff regarding this case in more than two years.

IT IS THEREFORE ORDERED that this case is dismissed for failure to prosecute.

DATED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:

  
DEE BENSON, CHIEF JUDGE  
United States District Court

FILED  
U.S. DISTRICT COURT  
2006 AUG -9 P 1:17

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

CLERK

GARRY CLEMENTS and DAVID  
GERBER,

Plaintiffs,

vs.

RESOURCE CONSULTANTS, INC.,

Defendant.

Case No. 2:04-cv-01008-DB

**ORDER GRANTING DEFENDANT'S  
UNOPPOSED MOTION FOR  
ENLARGEMENT OF TIME IN WHICH TO  
FILE REPLY MEMORANDA**  
Judge Dee Benson

THE COURT, having reviewed Defendant's Unopposed Motion for Enlargement of Time in which to File Reply Memoranda, and, being fully advised in the premises, hereby

ORDERS that defendant, Resource Consultants, Inc., is granted a ten-day enlargement of time, up to and including August 24, 2006, in which to submit its reply memoranda on the issues of (a) the amount of back pay awardable to plaintiffs pursuant to the Court's June 5, 2006 Memorandum Opinion and Order, and (b) whether plaintiffs are entitled to an award of liquidated damages.

SO ORDERED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:



Dee Benson  
United States District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of August, 2006, a true and correct copy of the foregoing **ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE REPLY MEMORANDA** was electronically filed with the clerk of court using the CM/ECF system, which will send notification of such filing to the following individual at the following electronic mail address:

Richard M. Hymas, Esq.  
Durham Jones & Pinegar  
111 East Broadway, Suite 900  
P.O. Box 4050  
Salt Lake City, UT 84110

/s/ LINO S. LIPINSKY de ORLOV  
LINO S. LIPINSKY de ORLOV



Alan L. Sullivan (3152)  
James D. Gardner (8798)  
Snell & Wilmer LLP.  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

Attorneys for Defendant Bruce L. Olson

**IN THE UNITED STATES DISTRICT COURT,  
FOR THE STATE OF UTAH, CENTRAL DIVISION**

EXECUTIVE RISK INDEMNITY INC.,

Plaintiff,

vs.

CAMERON J. LEWIS, et al.,

Defendants.

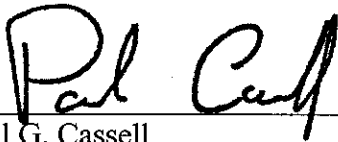
**ORDER FOR PRO HAC VICE  
ADMISSION OF PHILLIP A. COLE**

Case No. 2:04cv1115

Honorable Paul G. Cassell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Phillip A. Cole in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 9<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Paul G. Cassell  
U.S. District Judge

RECEIVED CLERK

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

AUG - 9 2006

AUG 8 2006  
U.S. DISTRICT COURT

BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

FILED IN UNITED STATES DISTRICT COURT DISTRICT OF UTAH

# UNITED STATES DISTRICT COURT

Central

District of

UNITED STATES OF AMERICA

V.

Charles Lewis Searle

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:05CR000229-001

USM Number: 12703-081

Wendy Lewis

Defendant's Attorney

AUG 09 2006  
MARKUS B. ZIMMER, CLERK  
BY Utah DEPUTY CLERK

## THE DEFENDANT:

☒ pleaded guilty to count(s) I Felony Information

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§2252A(a)(5)(B)	Possession of Child Pornography		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/8/2006

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

8-7-2006

Date

DEFENDANT: Charles Lewis Searle  
CASE NUMBER: DUTX 2:05CR000229-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months. This sentence will run concurrent with the pending case in the State of Utah, case no. 041906353.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the Federal Correctional Institution at Butner, NC., for participation in the sexual treatment program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Charles Lewis Searle  
CASE NUMBER: DUTX 2:05CR000229-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☒ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Charles Lewis Searle  
CASE NUMBER: DUTX 2:05CR000229-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall register with the state sex-offender registration agency in any state where the defendant resides, is employed, carries on a vocation, or is a student, as directed by the probation office. The Court orders that the presentence report may be released to the state agency for purposes of sex-offender registration.
2. The defendant shall participate in a mental-health and/or sex-offender treatment program as directed by the probation office.
3. The defendant is restricted from visitation with individuals who are under 18 years of age without adult supervision, as approved by the probation office.
4. The defendant shall abide by the following occupational restrictions: Any employment shall be approved by the probation office. In addition, if third-party risks are identified, the probation office is authorized to inform the defendant's employer of his supervision status.
5. The defendant shall not possess or use a computer with access to any online computer service without the prior written approval of the Court. This includes any Internet service provider, bulletin board system, or any other public or private computer network. Any approval by the Court shall be subject to the conditions set by the Court or the probation office. In addition, the defendant shall: (A) Not possess or use any public or private data encryption technique or program, and (B) Consent to having installed on his computer(s) any hardware or software systems to monitor his computer usage.
6. The defendant shall not view or otherwise access pornography in any format.

DEFENDANT: Charles Lewis Searle  
CASE NUMBER: DUTX 2:05CR000229-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00	
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Charles Lewis Searle  
CASE NUMBER: DUTX 2:05CR000229-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document



MARY C. CORPORON #734  
Attorney for Defendant Cindy Angelos  
CORPORON, WILLIAMS & BRADFORD, P.C.  
405 South Main Street, Suite #700  
Salt Lake City, Utah 84111  
Telephone: (801) 328-1162  
Facsimile: (801) 328-9565

---

IN THE UNITED STATES DISTRICT COURT,  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	<b>ORDER AUTHORIZING PRETRIAL</b>
	:	<b>COMPETENCY EVALUATION OF</b>
Plaintiff,	:	<b>DEFENDANT</b>
	:	
-vs-	:	
	:	
ROBERT DAVID GALLEGOS,	:	
RONALD LAPHEL MCDANIEL,	:	
GERRIT TODD FARRIMOND, AND	:	Case No. 2:05CR00469 PGC
CINDY LORENE ANGELOS,	:	
	:	Judge Paul G. Cassell
Defendants.	:	Magistrate Judge

---

Based upon Defendant, Cindy Lorene Angelos', Request for Inquiry into Competency and  
for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. An examination of the Defendant shall be conducted pursuant to 18 U.S.C. § 4241(b) to  
determine if the Defendant is suffering from a mental disease or defect rendering her  
mentally incompetent to the extent that she is unable to understand the nature and

consequences of the proceedings against her or to assist properly in her defense. A report of examination shall be prepared and provided to the Court and the parties, pursuant to 18 U.S.C. § § 4241(b) and 4241(c).

2. The examination shall be conducted at a federal facility of incarceration. The expenses of the examination shall be paid pursuant to the Criminal Justice Act.
3. In the event the report concludes that the Defendant is not competent, the report of examination also shall include a prognosis for the Defendant, an estimation of the likelihood that the Defendant will attain the capacity to permit the trial to proceed, and the likely effect of hospitalization of the Defendant pursuant to 18 U.S.C. § 4241(d) on the Defendant and her mental capacity.
4. The Court will schedule a competency hearing for the Defendant at an appropriate time after the receipt of the report of examination.

DATED this 9th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

HONORABLE PAUL G. CASSELL  
United States District Court Judge

# United States District Court

## District of Utah

FILED  
U.S. DISTRICT COURT

2006 AUG -9 P 2:12

UNITED STATES OF AMERICA

vs.

Miguel Martinez

(For Revocation of Probation or Supervised Release)

### JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: DUTX 2:05CR000596-001

Plaintiff Attorney: Kevin Sundwall

Defendant Attorney: Kristen Angelos

Atty: CJA \_\_\_ Ret \_\_\_ FPD X

Defendant's Soc. Sec. No.: XXX-XX-9644

Defendant's Date of Birth: 1978

Defendant's USM No.: 69144-065

Defendant's Residence Address:

05/15/2006

Date of Imposition of Sentence

Defendant's Mailing Address:

Country

Country

THE DEFENDANT:

COP

Verdict

☒ admitted to allegation(s)

#1 of the Petition

☐ pleaded nolo contendere to allegation(s) which was accepted by the court.

☐ was found guilty as to allegation(s)

**Violation Number**

**Nature of Violation**

**Date Violation Occurred**

1. The defendant has absconded supervision, as of July 11, 2006, his whereabouts are unknown.

7/11/2006

☐ The defendant has been found not guilty on count(s)

☐ Count(s) (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

**3 Months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of

**24 Months**

☐ The defendant is placed on Probation for a period of  
The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

#### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. If the defendant is removed from the United States by ICE officials, he shall not illegally reenter the United States.
2. Pursuant to 42 USC 14135a and 10 USC 1565, as authorized in Section 3 of the DNA Analysis Backlog Elimination Act of 2000 and Section 203 of the Justice for All Act of 2004, the defendant shall submit to the collection of a DNA sample at the direction of BOP or the USPO.

#### **CRIMINAL MONETARY PENALTIES**

##### **FINE**

The defendant shall pay a fine in the amount of \$ NONE , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:
- 

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

## RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

## SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☐ forthwith.

☒ The Court reinstates the SAF originally imposed on 5/15/2006.

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

## PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

**RECOMMENDATION**

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
- 

**CUSTODY/SURRENDER**

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

8-9-2006

Tena Campbell  
Tena Campbell  
United States District Judge

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

# United States District Court District of Utah

FILED  
DISTRICT COURT

UNITED STATES OF AMERICA

vs.

**Carlos Ayala-Trapala**  
aka Juan Valdez Garcia

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

2006 AUG - 9 P 2: 12

DISTRICT OF UTAH

Case Number: DUTX 2:05CR000655-001TC

Plaintiff Attorney: **Veda Travis**

Defendant Attorney: **Robert Hunt**

Atty: CJA \_\_\_ Ret \_\_\_ FPD X

Defendant's Soc. Sec. No.: NONE

Defendant's Date of Birth: 1980

Defendant's USM No.: 12888-081

Defendant's Residence Address:

\_\_\_\_\_

\_\_\_\_\_

Country \_\_\_\_\_

08/02/2006

Date of Imposition of Sentence

Defendant's Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

Country \_\_\_\_\_

### THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP 03/29/2006 Verdict \_\_\_\_\_

### One of the Indictment

### Title & Section

21 USC §§ 841 (a)(1)

### Nature of Offense

Possession of Methamphetamine with Intent to  
Distribute

### Count

### Number(s)

1

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 2 of the Indictment (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of 70 Months

Upon release from confinement, the defendant shall be placed on supervised release for a term of 60 Months

☐ The defendant is placed on Probation for a period of \_\_\_\_\_  
The defendant shall not illegally possess a controlled substance.



*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☒ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall not illegally reenter the United States.
2. Pursuant to 42 U.S.C. § 14135a and 10 U.S.C. § 1565, as authorized in Section 3 of the DNA Analysis Backlog Elimination Act of 2000 and Section 203 of the Justice for All Act of 2004, the defendant shall submit to the collection of a DNA sample at the direction of BOP or the United States Probation Office.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ NONE , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00 , payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

### DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

**RECOMMENDATION**

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**The Court recommends the defendant serve his sentence at the facility located in Portland, Oregon, and receive credit for all time served in federal custody.**

**CUSTODY/SURRENDER**

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

8-9-2006

Tena Campbell  
Tena Campbell  
United States District Judge

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

# United States District Court

## District of Utah

FILED  
U.S. DISTRICT COURT

2006 AUG -9 P 2:12

**UNITED STATES OF AMERICA**

**vs.**

**Christopher A. Shilts**

### JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

DISTRICT OF UTAH

Case Number: DUTX 2:05CR0000787-001 TC

Plaintiff Attorney: **Jonathan Boyd**

Defendant Attorney: **A. Chelsea Koch**

Atty: CJA \_\_\_ Ret \_\_\_ FPD X

Defendant's Soc. Sec. No.: XXX-XX-3099

Defendant's Date of Birth: 1976

08/07/2006

Date of Imposition of Sentence

Defendant's USM No.: 13008-081

Defendant's Residence Address:

Defendant's Mailing Address:

Country

Country

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP 05/10/2006 Verdict

1, 2, 3 and 4 of the Superseding Felony Information

#### Title & Section

#### Nature of Offense

#### Count

#### Number(s)

18 USC § 844(I)

Arson

1

18 USC § 1343

Wire Fraud

2

42 USC § 408(a)(7)(B)

Social Security Number Fraud

3, 4

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 1-12 of the Indictment (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

60 Months

Upon release from confinement, the defendant shall be placed on supervised release for a term of

36 Months

☐ The defendant is placed on Probation for a period of \_\_\_\_\_.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

#### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall maintain full-time, verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.
2. The defendant is to inform any employer or prospective employer of his current conviction and supervision status.
3. The defendant shall abide by the following occupational restrictions:
  - A) The defendant shall not have direct or indirect control over the assets or funds of others,
  - B) The defendant shall not be self-employed.
4. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the probation office.
5. The defendant shall provide the probation office access to all requested financial information.
6. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
7. Pursuant to 42 U.S.C. § 14135a and 10 U.S.C. § 1565, as authorized in Section 3 of the DNA Analysis Backlog Elimination Act of 2000 and Section 203 of the Justice for All Act of 2004, the defendant shall submit to the collection of a DNA sample at the direction of BOP or the United States Probation Office.

**CRIMINAL MONETARY PENALTIES**

**FINE**

The defendant shall pay a fine in the amount of \$ NONE , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:
- 
- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
- 

**RESTITUTION**

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Ikano d.b.a. SISNA 265 East 100 South, Suite 245 Salt Lake City, UT 84111	70,799.27	70,799.27
The Hartford Group P.O. Box 5025 Hartford, CT 06102-5025	34,009.48	34,009.48
Auction Insurance P.O. Box 530250 Birmingham, AL 35253	20,000.00	20,000.00
(** See Separate Restitution List for additional victims) Total from Separate Restitution List -	64,100.00	64,100.00
<b>Totals:</b>	<b>\$ 188,908.75</b>	<b>\$ 188,908.75</b>

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

**Restitution is due immediately, and shall be payable at a minimum rate of \$200 per month upon release from incarceration. The Court waives interest on the restitution.**

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

#### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 400.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid



**PRESENTENCE REPORT/OBJECTIONS**

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

**DEPARTURE**

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

**RECOMMENDATION**

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant serve his sentence at FCI Terminal Island, CA.

**CUSTODY/SURRENDER**

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE: 8-9-2006

Tena Campbell  
Tena Campbell  
United States Judge

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

RONALD D. RUSSO,  Plaintiff,  vs.  BALLARD MEDICAL PRODUCTS, and KIMBERLY-CLARK CORPORATION,  Defendants.	ORDER & MEMORANDUM DECISION    Case No. 2:05 CV 59
--	--

Under the protection of a confidentiality agreement, Plaintiff Ronald D. Russo entered into negotiations with Defendant Ballard Medical Products concerning several inventions that Mr. Russo hoped Ballard would be interested in acquiring. According to Mr. Russo, Ballard abandoned those negotiations and then impermissibly incorporated the information he had provided during the parties' discussions into the design of a medical device, named TrachCare 72, upon which Ballard ultimately received two patents. Mr. Russo filed this suit seeking recovery for the alleged idea theft.

Before the court are five motions for summary judgment and numerous motions in limine. The parties have provided extensive briefing and, at a hearing scheduled by the court, offered oral argument. Now being fully advised, the court enters the following order.

**Summary Judgment Standard**

Federal Rule of Civil Procedure 56 permits the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’’ Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990).

### **Background**

In light of the standard governing summary judgment motions, the following factual exposition is largely confined to matters that the parties do not dispute. Any disputed facts will be identified.

#### *Mr. Russo and Ballard*

Mr. Russo spent many years of his professional career pursuing research and development goals for large corporations. Currently, he supports himself as an independent inventor. Mr. Russo does not manufacture his inventions, but rather attempts to sell or license them to corporations, which, in turn, handle the manufacturing and marketing of those inventions.

Before the present dispute arose, Mr. Russo contracted with Ballard to provide consulting services. Around the same time, Mr. Russo and Ballard entered into a royalty agreement that provided Ballard with the option of utilizing three of Mr. Russo’s patents relating to tracheal suction catheters. Although the consulting agreement expired at the end of its one-year term, Ballard and Mr. Russo remained in contact, keeping the door open for future business dealings.

#### *Discussion Concerning Mr. Russo’s New Inventions*

A few years following the expiration of the parties’ consulting agreement, Mr. Russo and

Ballard began communicating about closed tracheal suction devices. In correspondence with Ballard, Mr. Russo indicated that he had several pending patents that might interest Ballard. Mr. Russo expressed his willingness to disclose information relating to his inventions under the protection of an appropriate confidentiality agreement.

Approximately a year following that correspondence, Todd Medley, a Ballard employee, contacted Mr. Russo to obtain a description of the technology Mr. Russo had mentioned to enable the parties to prepare a confidentiality agreement. Mr. Russo provided the following titles for his inventions: (1) Protective Suction Control Catheter with Valve, (2) Thumb Conformable Suction Control Regulator, and (3) Two Part Closed Tracheal Suction System. Mr. Russo informed Ballard that a patent for the Protective Suction Control Catheter with Valve had recently issued. He also indicated that patents were pending on the other two inventions.

After receiving that information from Mr. Russo, Rick D. Lorenzen, another Ballard employee, helped prepare a Confidential Disclosure Agreement to facilitate further discussions with Mr. Russo about his inventions. That agreement contained a forum-selection clause designating that “any action under this Agreement may be filed and maintained only in the state or federal courts located within Salt Lake County, State of Utah, and all parties hereby submit to jurisdiction of such courts.” (Confidential Disclosure Agreement, attached as Ex. 23 to Defs.’ Memo. in Supp. of Their Mot. for Summ. J. (All Counts).) Mr. Russo received, signed, and then returned the Confidential Disclosure Agreement to Ballard along with a binder of information on the three technologies the parties had been discussing.

#### *The Parties Meet*

About one month later, Mr. Russo had lunch with representatives from Ballard at Mickey Mantle’s restaurant in New York City. By that time, Mr. Russo had obtained a patent for the

Thumb Conformable Suction Control Regulator, leaving the Two Part Closed Tracheal Suction System as the only invention for which a patent was still pending.

The parties dispute exactly what occurred at the New York City lunch. Mr. Russo alleges that the parties' discussion centered not on the materials that Mr. Russo had previously provided, but on a related improvement to the Two Part Closed Tracheal Suction System that Mr. Russo had developed. According to Mr. Russo, the improvement was evidenced by a drawing titled "Drawing No. 4," which was one of four drawings he alleges he provided to Ballard during the New York City lunch. Mr. Russo claims that he and Ballard discussed Drawing No. 4 in detail and that he not only provided Ballard with a copy of that drawing, but also produced a prototype incorporating the technology depicted in Drawing No. 4. Ballard, in contrast, contends that the discussion at the New York City lunch was confined to the information contained in the binder Mr. Russo had previously provided to Ballard, and that no information outside of the scope of Mr. Russo's patents or his pending patent was discussed. Ballard further alleges that Mr. Russo did not produce Drawing No. 4 at the lunch, provide it with a copy of that drawing, or produce a prototype incorporating the information contained in Drawing No. 4.

#### *Negotiations*

Approximately two months after the New York City lunch meeting, Mr. Russo obtained a patent for the Two Part Closed Tracheal Suction System. Accordingly, by that time Mr. Russo held patents on the three inventions he had initially described to Ballard when the parties were preparing the Confidential Disclosure Agreement.

The parties agree that negotiations to acquire Mr. Russo's inventions began soon after the lunch meeting. The parties diverge on the issue of just what Ballard was seeking to acquire. Mr. Lorenzen asked Paul Hess, an in-house attorney for Ballard, to draft an agreement that would

provide Ballard with the option of acquiring the three patents that the parties had discussed. Mr. Lorenzen's written request to Hess lists the three patents, including their corresponding patent numbers, and indicates that Mr. Russo should "provide all drawings in his possession" to Ballard within thirty days following the execution of the agreement. (Note, July 10, 1998, attached as Ex. 29 to Defs.' Memo. in Supp. of Their Mot. for Summ. J. (All Counts).) Ballard contends that its interest extended no farther than acquiring the right to the patents themselves, while Mr. Russo claims that Ballard was also seeking to acquire the information conveyed by Drawing No. 4.

During negotiations, some disagreement arose concerning the possibility that Mr. Russo's patent on his Two Part Closed Tracheal Suction System might infringe on earlier patents owned by Walter Jinotti. Mr. Russo attempted to allay those concerns. Ultimately, the parties failed to reach an agreement and abandoned negotiations.

#### *The Lawsuit*

Approximately five years after negotiations between Mr. Russo and Ballard broke down, Mr. Russo filed this lawsuit. In his complaint, Mr. Russo alleges that Ballard eventually applied for and received patents for a medical device, the TrachCare 72, which impermissibly incorporate ideas he disclosed to Ballard while the parties were in negotiations. Specifically, Mr. Russo contends that Ballard commercialized and patented Drawing No. 4, which he claims he provided to Ballard during the New York City lunch.

Mr. Russo originally filed suit in Rhode Island state court, alleging general idea-theft causes of action. Ballard removed the suit to federal court and then, relying on the forum-selection clause contained in the Confidential Disclosure Agreement, filed a motion to dismiss the case or, alternatively, to transfer the suit to the State of Utah. Mr. Russo opposed that motion

by arguing that the parties did not intend Drawing No. 4 to be covered by the Confidential Disclosure Agreement and, therefore, the forum-selection clause did not apply to his causes of action. The district court in Rhode Island disagreed with Mr. Russo and held that the Confidential Disclosure Agreement applied to Mr. Russo's claims. The court then transferred the case to Utah. Following the transfer, Mr. Russo amended his complaint to allege that Ballard had violated the terms of the Confidential Disclosure Agreement by impermissibly using the information contained in Drawing No. 4.

### **Analysis**

Five separate summary judgment motions are now before the court for resolution. First, Mr. Russo seeks summary judgment on the issue of whether Defendants, considering the position they took before the United States District Court of Rhode Island, are now precluded from arguing that Drawing No. 4 is outside of the protections afforded by the Confidential Disclosure Agreement. Second, Ballard, relying on Mr. Russo's assertions in the Rhode Island proceeding that Drawing No. 4 was not covered by the Confidential Disclosure Agreement, seeks summary judgment on Mr. Russo's claim that Ballard breached that agreement by misappropriating Drawing No. 4. Third, Ballard has filed a motion for summary judgment on Mr. Russo's claims of conversion and unjust enrichment, claiming those causes of action are preempted by Utah's Uniform Trade Secrets Act. Fourth, Kimberly-Clark, which acquired Ballard the year following the New York City lunch meeting, seeks summary judgment on all claims against it, arguing that a parent-subsidiary relationship alone is insufficient to establish liability. Fifth, Defendants seek summary judgment on all causes of action on the ground that Mr. Russo's claims require him to meet certain federal inventorship standards that he cannot satisfy.

In addition to the summary judgment motions, the parties have filed numerous motions in



limine. After addressing the pending motions for summary judgment, the court will turn to the parties' motions in limine.

#### **I. The Confidential Disclosure Agreement and Drawing No. 4**

While before the U.S. District Court of Rhode Island--with the potential operation of a forum-selection clause hanging in the balance--Mr. Russo and Defendants submitted argument to the court addressing whether the Confidential Disclosure Agreement applies to Drawing No. 4. Mr. Russo argued that the Confidential Disclosure Agreement was confined to the three patents expressly identified to Ballard and that Drawing No. 4 was therefore not covered by the agreement. Defendants, assuming for the purposes of their motion that Drawing No. 4 was provided to Ballard, argued that the language of the Confidential Disclosure Agreement was broad enough to cover Drawing No. 4. The U.S. District Court of Rhode Island concluded that the Confidential Disclosure Agreement applied to the claims in Mr. Russo's complaint and transferred the case to this court.

Now, although not styled as such, the parties have essentially filed cross-motions for summary judgment on the issue of whether Drawing No. 4, assuming it was provided to Ballard, is covered by the Confidential Disclosure Agreement. Somewhat ironically, the parties have switched positions on this issue following the entry of the U.S. District Court of Rhode Island's transfer order. Mr. Russo, fully embracing the decision of U.S. District Court of Rhode Island, has now amended his complaint to allege that Ballard breached the Confidential Disclosure Agreement by misappropriating Drawing No. 4. Citing the doctrine of judicial estoppel, Mr. Russo has moved the court for a summary judgment order precluding Defendants from arguing that Drawing No. 4 is not covered by the Confidential Disclosure Agreement.

Defendants assert that the opposite result is more appropriate, and have requested

summary judgment on Mr. Russo's claim that Ballard breached the Confidential Disclosure Agreement. Defendants justify this position by arguing that the U.S. District Court of Rhode Island did not conclude that Drawing No. 4 is covered by the Confidential Disclosure Agreement and that Mr. Russo has judicially admitted that Drawing No. 4 is not covered by the Confidential Disclosure Agreement. According to Defendants, Mr. Russo's judicial admission regarding the scope of the Confidential Disclosure Agreement warrants dismissal of Mr. Russo's claim that Ballard breached that agreement by misappropriating Drawing No. 4.

### *Judicial Estoppel*

The Tenth Circuit has explained the doctrine of judicial estoppel in the following manner:

[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.

Johnson v. Lindon City Corp., 405 F.3d 1065, 1069 (10th Cir. 2005) (internal quotation omitted).

Judicial estoppel operates "to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001) (internal quotation and citations omitted).

Mr. Russo argues that the doctrine should operate here to prevent Defendants from altering their position with respect to the scope of the Confidential Disclosure Agreement. In response, Defendants argue that judicial estoppel is inapplicable because the U.S. District Court of Rhode Island did not accept Defendants' argument that the Confidential Disclosure Agreement applied to Drawing No. 4. Although it has become increasingly clear that Mr. Russo's claims against Defendants are confined to the misappropriation of Drawing No. 4, Defendants argue that Mr. Russo's causes of action were not so clearly defined when the parties were before the U.S. District Court of Rhode Island. In fact, an entirely different complaint was

at issue in those proceedings because the Second Amended Complaint, which now governs this case and expressly mentions Drawing No. 4, was not filed until after the suit was transferred to Utah. Accordingly, Defendants assert that the U.S. District Court of Rhode Island believed that Mr. Russo was claiming misappropriation of information directly relating to his pending patents as well as Drawing No. 4. That belief led the court to transfer the case because it considered the general subject matter of Mr. Russo's claims to fall within the scope of the Confidential Disclosure Agreement. Under Defendants' approach, the transfer order cannot be fairly read as making a specific conclusion about Drawing No. 4's relation to the Confidential Disclosure Agreement.

A review of the U.S. District Court of Rhode Island's written decision, as well as the parties' written submissions and argument before that court, establish that the court did conclude that Drawing No. 4 is covered by the Confidential Disclosure Agreement. Although the complaint that Mr. Russo originally filed in Rhode Island was notably less exact in its claims than the Second Amended Complaint that now governs these proceedings, it is beyond doubt that the U.S. District Court of Rhode Island was aware that Mr. Russo's claims were highly focused, if not wholly confined, to the alleged misappropriation of Drawing No. 4.

Further, the transcript of the oral argument held before the U.S. District Court of Rhode Island leaves little doubt concerning Defendants' position relating to the applicability of the Confidential Disclosure Agreement to Drawing No. 4. During oral argument on Defendants' motion to dismiss or transfer Mr. Russo's suit to Utah, counsel for Defendants stated:

[Russo] next argues at page four of his opposition brief, well, the confidential disclosure agreement wasn't intended to cover drawings 1 through 4. It was really only intended to cover the patent application itself, which he says is separate and unrelated.

And that argument is defective as well, your Honor. Remember the

confidential agreement, the confidential disclosure agreement defines confidential information as all disclosures of information relating to the inventions. It is as clear as day that those four drawings relate to his inventions.

(Transcript of May 25, 2004 Hearing 10, attached as Ex. C to Req. for Jud. Notice in Supp. of Plf.'s Mot. for Part. Summ. J. (emphasis added).) Additionally, the transcript reveals the court's understanding that Drawing No. 4 was the crucial component of Mr. Russo's claims against Defendants. When questioning Joseph Kelly, who represented Mr. Russo at the hearing, the following exchange took place:

THE COURT: What do you claim was stolen here? What idea was stolen? What's contained in Drawing 4?

MR. KELLY: Drawing number 4.

THE COURT: That's the whole basis of your claim in this case?

MR. KELLY: Yes. That's the whole basis of the claim.

(Id. at 27.)

After considering the representations and arguments offered by the parties, the U.S. District Court of Rhode Island, relying on the language of the Confidential Disclosure Agreement, concluded that "the evidence points in one direction only, i.e., that the clause was intended to apply to all claims arising out of the exchange of information that took place at the [New York City lunch] meeting." (Decision & Order, attached as Ex. C to Req. for Jud. Notice in Supp. of Plf.'s Mot. for Part. Summ. J.) The ruling of the U.S. District Court of Rhode Island leaves little room for argument. The court concluded that all confidential information exchanged during the New York City lunch was covered by the Confidential Disclosure Agreement. It inescapably follows that if Mr. Russo produced Drawing No. 4 at that lunch, the court considered that drawing covered by the parties' confidentiality agreement. In short, the U.S. District Court of Rhode Island was persuaded by Defendants' argument concerning the broad scope of the

Confidential Disclosure Agreement and adopted the position for which Defendants had lobbied.

What is less clear is whether the doctrine of judicial estoppel operates in this context to prevent the arguments concerning the Confidential Disclosure Agreement now advanced by Defendants. Historically, the doctrine of judicial estoppel has not been warmly embraced by the Tenth Circuit. See, e.g., Johnson, 405 F.3d at 1068-69 (“[T]his circuit has repeatedly refused to apply this principle [judicial estoppel] . . . (citations omitted)); 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4477 (Westlaw 2006) (“The lack of clear Supreme Court direction until the new century left the Tenth Circuit free to repeatedly deny any recognition of judicial estoppel . . .”). But in Johnson, the Tenth Circuit recognized that the United States Supreme Court’s use of judicial estoppel in the case of New Hampshire, 532 U.S. 742, “altered the legal landscape,” and that the Tenth Circuit was obligated to “follow the guidance of the Court’s binding precedent.” Johnson, 405 F.3d at 1069 (citing United States v. Hernandez-Rodriguez, 352 F.3d 1325, 1333 (10th Cir. 2003)). Accordingly, the court applied the doctrine. See id.

Johnson involved circumstances distinguishable from this case, however, because that case involved two completely separate legal proceedings. In Johnson, the Tenth Circuit affirmed the entry of summary judgment against two plaintiffs who had alleged that their constitutional rights were violated when they were wrongfully arrested and imprisoned. Id. at 1067-68. The court held that summary judgment was appropriate because, after their arrest, the two plaintiffs entered pleas in abeyance in which they admitted they had committed assault. Id. at 1068-69.

Similarly, in New Hampshire, the case that caused the Tenth Circuit to alter the course of its judicial estoppel jurisprudence, the Court applied the doctrine to prevent the State of New Hampshire from deviating from an interpretation of a boundary determination that New

Hampshire has previously accepted in litigation occurring nearly thirty years earlier. 532 U.S. at 755 (“Having convinced this Court to accept one interpretation of ‘Middle of the River,’ and having benefitted from that interpretation, New Hampshire now urges an inconsistent interpretation to gain an additional advantage at Maine’s expense.”).

Both Johnson and New Hampshire addressed situations involving multiple judicial proceedings. Here, in contrast, Mr. Russo is requesting that the court apply the doctrine to prevent Defendants from taking a different position in the same proceeding. Faced with a similar situation, the court in Tuff-N-Rumble Management, Inc. v. Sugarhill Music Publishing, Inc., 99 F. Supp. 2d 450, 457 n. 3 (S.D.N.Y. 2000), declined to apply judicial estoppel. The court first noted that “[t]he Second Circuit has never held that judicial estoppel can apply to inconsistent positions in the same proceeding . . . .” Id. The court went on to state that judicial estoppel “is not looked upon very favorably in the Second Circuit, and there are good reasons for not extending it to cover inconsistencies in the same proceeding.” Id. The primary rationale the court advanced for not extending judicial estoppel to inconsistencies occurring within the same proceeding was the tension between the doctrine and liberal pleading standards, which allow parties to pursue alternative theories. See id.; see also Cayuga Indian Nat. of New York v. Pataki, 188 F. Supp. 2d 223, 234 (N.D.N.Y. 2002) (similarly declining to apply judicial estoppel when a party asserted inconsistent positions in the same legal proceeding).

Other courts have applied the doctrine when a party attempts to take inconsistent positions in the same proceeding. For example, in Continental Illinois Corp. v. C.I.R., 998 F.2d 513 (7th Cir. 1993), the Seventh Circuit stated:

It is true that the doctrine [of judicial estoppel] is usually applied to successive suits, Astor Chauffeured Limousine Co. v. Runnfeldt Investment Corp., 910 F.2d 1540, 1547-48 (7th Cir. 1990), but it is not so limited. Witham v. Whiting Corp., 975 F.2d 1342, 1345 (7th Cir. 1992). A party can argue inconsistent positions in

the alternative, but once it has sold one to the court it cannot turn around and repudiate it in order to have a second victory, which is what the IRS is seeking here.

Id. at 518; see also Ergo Science, Inc. v. Martin, 73 F.3d 595, 598-99 (5th Cir. 1996) (applying judicial estoppel to bar a position inconsistent with that asserted by the party earlier in the action). The United States Supreme Court has also articulated, although in dicta, a formulation of the judicial estoppel rule that allows for its operation when a party takes a position inconsistent with that taken earlier in the same proceeding. See Pegram v. Hendrich, 530 U.S. 211, 227 n. 8 (“Judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.”).

The Seventh Circuit’s approach to judicial estoppel is compelling. It recognizes the policy served by liberal pleading standards and provides parties the ability to pursue alternative theories, but also recognizes that once a court has accepted a party’s position, that party should not be allowed to, in essence, pull the rug out from under a court’s prior ruling.

The record in this case establishes that Defendants’ urged the U.S. District Court of Rhode Island to hold that, assuming Mr. Russo provided Drawing No. 4 to Ballard, that disclosure was covered by the Confidential Disclosure Agreement. The court agreed with Defendants and transferred this case to Utah. After that transfer, Mr. Russo, relying on Defendants’ position before the U.S. District Court of Rhode Island and on the written order issued by that court, amended his complaint to allege a cause of action for breach of the Confidential Disclosure Agreement. Defendants cannot now change positions to seek “a second victory” at the expense of U.S. District Court of Rhode Island and Mr. Russo.

Given the foregoing, Defendants are estopped from arguing that Drawing No. 4 is outside of the protection offered by the Confidential Disclosure Agreement. But that estoppel does not

change the reality that the applicability of the Confidential Disclosure Agreement to Drawing No. 4 is dependent on whether Mr. Russo provided that drawing to Ballard during the New York City lunch. Defendants are free, of course, to challenge Mr. Russo's assertions that he did provide that drawing.

Given the foregoing analysis, Plaintiff Ronald D. Russo's Motion for Partial Summary Judgment that Drawing No. 4 Is Covered by the Confidential Disclosure Agreement is GRANTED and Defendants' Cross Motion for Summary Judgment on Count II is DENIED.

## **II. Preemption of State Law Claims**

Defendants have requested summary judgment on Mr. Russo's claims of conversion and unjust enrichment, arguing that those claims are preempted by the Utah Uniform Trade Secrets Act ("UTSA"). Mr. Russo responds that summary judgment on those claims is inappropriate because he should be allowed to pursue his common law causes of action in the event he fails to establish that the allegedly misappropriated information constitutes a trade secret.

The UTSA states that it "displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret." Utah Code Ann. § 13-24-8 (2004). There are no published cases in Utah that address the preemptive effect of the UTSA.

Defendants argue that case law from other jurisdictions require a plaintiff alleging trade secret misappropriation to plead facts beyond the scope of the trade secrets cause of action if they desire to avoid preemption. (See Defs.' Reply Memo. in Supp. of Their Mot. for Summ. J. on Counts III & IV 2 ("Simply put, [Mr.] Russo's conversion and unjust enrichment claims . . . are based exclusively on his allegations of trade secret misappropriation. They are, therefore, preempted by the UTSA and should be dismissed with prejudice.").)

The great weight of authority runs contrary to Defendants' assertion. Indeed,



Defendants' approach is somewhat paradoxical: they deny that Drawing No. 4 meets the definition of a trade secret, but claim that Mr. Russo's claims of conversion and unjust enrichment are preempted by the UTSA, a statute that only provides relief if there is actual or threatened misappropriation of a "trade secret." See Utah Code Ann. §§ 13-24-2 to -4. In other words, Defendants' claim that Mr. Russo's causes of action are preempted by a statute that grants him no cause of action.

The more appropriate approach is to interpret the UTSA as displacing other remedies to the extent that allegedly misappropriated information constitutes a "trade secret," as that term is defined by the UTSA. In fact, this approach is consistent with the plain language of the UTSA, which provides that "other civil remedies that are not based upon misappropriation of a trade secret" are not preempted. Id. § 13-24-8(2)(b). If it is established that Drawing No. 4 is not a trade secret, then it follows that Mr. Russo's claims of conversion and unjust enrichment will not be based on misappropriation of a trade secret.

This understanding of the preemption question is consistent with that used by the Eleventh Circuit in Penalty Kick Management Ltd. v. Coca Cola Co., 318 F.3d 1284 (11th Cir. 2003). In Penalty Kick, the court noted that Georgia courts had interpreted Georgia's trade secret act, the relevant language of which is identical to the UTSA, as preempting a conversion claim "'to the extent' the claim addresses a trade secret." Id. at 1297. Because the plaintiff in Penalty Kick successfully established that the information misappropriated was, in fact, a trade secret, the plaintiff's alternatively pleaded civil remedies were preempted. Id. at 1298.

Similarly, in Callaway Golf Co. v. Dunlop Slazenger Group Americas, Inc., 318 F. Supp. 2d 216 (D. Del. 2004), the court recognized that state trade secret law would only preempt other legal remedies if it was, in fact, a trade secret that was misappropriated. See id. at 219-20 ("[I]f a

fact finder were to find that the processes and formulas . . . are Dunlop's trade secrets . . . then Dunlop's common law claims for conversion and unjust enrichment are preempted . . .").

At oral argument, counsel for Mr. Russo agreed that Mr. Russo's conversion and unjust enrichment claims will be preempted if he is able to establish that Drawing No. 4 constituted a trade secret. Because the resolution of that issue is still in some doubt, it is too early to know if Mr. Russo's conversion and unjust enrichment claims are "based upon misappropriation of a trade secret," Utah Code Ann. § 13-24-8(2)(b), and therefore preempted.

Accordingly, Defendants' Motion for Summary Judgment on Counts III and IV is DENIED.

### **III. Kimberly Clark**

Kimberly Clark claims that it is entitled to summary judgment on all claims that Mr. Russo has alleged against it. In support of its position, Kimberly Clark argues that the only manner in which it is implicated by Mr. Russo's claims is that it purchased Ballard approximately one year after the New York City lunch meeting and is now the parent corporation of Ballard. This motion is essentially a continuation of a motion to dismiss that Kimberly Clark filed earlier in this litigation.

In opposing that earlier motion, Mr. Russo argued that his use of the plural "Defendants" in the Second Amended Complaint, included Kimberly Clark as a defendant in Mr. Russo's UTSA, conversion, and unjust enrichment claims. Although Mr. Russo earlier indicated that he would attempt to find Kimberly Clark liable on alter-ego grounds, he now argues that Kimberly Clark is an appropriate defendant because it sells the TrachCare 72 product, which Mr. Russo alleges impermissibly incorporates information he disclosed to representatives of Ballard. Mr. Russo contends that because Kimberly Clark knew or should have known that the product it is

selling incorporates ill-gotten intellectual property, Kimberly Clark is liable to Mr. Russo.

In support of his assertion, Mr. Russo relies on the deposition testimony of Gerry Arambula, who is involved with marketing and selling the TrachCare 72. Throughout his deposition, Mr. Arambula consistently refers to “Kimberly Clark” when discussing the marketing and selling of the TrachCare 72 and makes no distinction between the many subsidiaries of Kimberly Clark that incorporate “Kimberly Clark” into their name.

Presumably to counter Mr. Russo’s reliance on the deposition testimony of Mr. Arambula, Kimberly Clark, in its reply memorandum, provided documentary exhibits indicating that a subsidiary named Kimberly-Clark Global Sales, Inc. handles sales of the TrachCare 72. Notably, Kimberly Clark did not submit any affidavits declaring that Kimberly Clark does not participate in sales activity related to the TrachCare 72.<sup>1</sup>

“Summary judgment is a drastic remedy [and] any relief pursuant to Fed. R. Civ. P. 56 should be awarded with care.” Conway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988) (citing Jones v. Nelson, 484 F.2d 1165, 1168 (10th Cir. 1973)). “Unless the moving party can demonstrate his entitlement beyond a reasonable doubt, summary judgment must be denied.” Id. (citing Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980)).

The current state of the evidentiary record does not support granting Kimberly Clark’s motion for summary judgment. Although Kimberly Clark provided documents indicating that Kimberly-Clark Global Sales, Inc. handles sales activity relating to the TrachCare 72, those

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<sup>1</sup>The court notes that two days following the hearing on this motion, Kimberly Clark enclosed two declarations in a letter sent directly to the court’s chambers. Mr. Russo promptly filed a motion to strike those declarations. Federal Rule of Civil Procedure 6(d) specifies that “[w]hen a motion is supported by affidavit, the affidavit shall be served with the motion.” Fed. R. Civ. P. 6(d). Because the declarations submitted by Kimberly Clark are untimely, the court will not consider them in resolving this motion and Mr. Russo’s motion to strike those declarations is granted.

documents do not preclude the possibility that Kimberly Clark engages in some sales activity relating to the TrachCare 72. Further, the deposition testimony of Mr. Arambula only serves to illustrate the present confusion concerning Kimberly Clark's involvement with the TrachCare 72.

Accordingly, Defendant Kimberly-Clark Corporation's Motion for Summary Judgment is DENIED.

#### **IV. Federal Inventorship Standards**

Although Mr. Russo alleges that Ballard impermissibly utilized his trade secret and ultimately obtained patents that incorporated that trade secret, Mr. Russo has asserted no causes of action that allege violations of patent law. Nevertheless, Defendants claim that they are entitled to summary judgment on all of Mr. Russo's claims because Mr. Russo cannot satisfy the prior conception requirement applicable to patent law claims.

According to Defendants, Mr. Russo's claims in this case are all contingent on a finding that Mr. Russo was the true inventor of the technology claimed in Ballard's patents. Defendants argue that patent law standards apply to this case because "[w]here a state law cause of action 'hinges' on finding a party to be the true inventor of a patented invention, federal patent law preempts the state law claim to the extent of requiring federal patent law to govern the standard of proving prior inventorship." (Defs.' Memo. in Supp. of Their Mot. for Summ. J. (All Counts) 2.) Defendants rely almost exclusively on University of Colorado Foundation v. American Cyanamid Co., 196 F.3d 1366 (Fed. Cir. 1999), for this proposition.

In Cyanamid, the court addressed whether the federal patent law standard of inventorship should be used to determine whether the plaintiffs in that case could pursue state law claims of fraudulent nondisclosure and unjust enrichment. The plaintiffs were a research university and two doctors employed by that university. The doctors alleged that they invented a product that

was ultimately patented by Cyanamid without their knowledge. The Federal Circuit analyzed the claims of the doctors separately from those of the university. The court held that the doctors' claims were not preempted by federal patent law.

Although the Doctors had no patent rights to reformulated Materna at the time of the suit, their state law claims are not simply an attempt to enforce property rights. Instead, the fraudulent nondisclosure claim springs from Cyanamid's alleged duty to inform the Doctors of the patent application. Similarly, the unjust enrichment claim springs not from an attempt to enforce intellectual property rights, but instead from Cyanamid's alleged wrongful use of the Doctors' research results. Therefore, . . . federal patent law does not preempt these state law claims.

Id. at 1371-72.

In contrast, the court concluded that the university's fraudulent nondisclosure and unjust enrichment claims "depend[ed] on the Doctors' status as inventors. Id. at 1372 (emphasis added). The court provided no substantive analysis explaining why the doctors' nondisclosure claim was not predicated upon a finding that they were the true inventors of the patent, while the university's claim was predicated upon such a showing. See id. But a close reading of Cyanamid reveals that the Federal Circuit's preemption analysis was focused on addressing whether the plaintiffs were attempting to use state law as a substitute for the property interest protection offered by federal patent law. See id.; see also Univ. of Colo. Found. v. Am. Cyanamid Co., 342 F.3d 1298, 1305-06 (Fed. Cir. 2003) (explaining that the court's earlier ruling on appeal was focused on whether the plaintiffs, by pursuing state law claims were attempting to seek property rights inconsistent with those offered by federal patent law).

Mr. Russo is not alleging any causes of action that directly implicate the validity of Ballard's patents or would otherwise affect Ballard's property interests in those patents. In contrast, the plaintiffs in Cyanamid, in addition to pursuing state law claims, also sought to add names to the patent and to modify ownership. In this regard, Cyanamid is similar to Stern v.

Trustees of Columbia University, 434 F.3d 1375 (Fed. Cir. 2006), also relied upon by the Defendants in this case.

In Stern, the Federal Circuit affirmed a district court's dismissal of a plaintiff's state law claims, including a claim for unjust enrichment, after concluding that the plaintiff had not established that he was a co-inventor of the patent. Id. at 1378. In that case, the plaintiff specifically brought a claim requesting that his name be added as a co-inventor to the patent. Id. at 1377. A review of the district court's opinion reveals that the plaintiff's state law claims made specific reference to duties owed to a co-inventor. See id. In other words, in Stern, the court applied federal patent law because the plaintiff was expressly seeking a modification to a patent. Because the plaintiff in Stern linked his state law claims to his status as a co-inventor of the patent, a status the plaintiff was unable to establish, the district court was able to dismiss the plaintiff's state law claims.

While Cyanamid and Stern do provide some indication of the possibility of preemption in a situation like that present here, other precedent from the Federal Circuit establishes that preemption is inappropriate in this case. In fact, the Federal Circuit has indicated that the concept of independent corroboration, a component of the federal inventorship standard, is not applicable to a state trade secret claim. In C&F Packing Co. v. IBP, Inc., 224 F.3d 1296 (Fed. Cir. 2000), a case involving alleged trade secret misappropriation, the court declined to utilize the federal corroboration standard, stating that

[p]atent interference law . . . is concerned with priority of invention and does not set the standard for detecting the existence of a trade secret. In a priority contest it is the timing of inventive activities and the diligence of a putative inventor that is in issue, not the existence of the invention itself. Rather than apply inapposite patent law requirements, this court looks to the trade secret law of the relevant state in misappropriation cases.

Id. at 1301 (internal citation omitted).

The Federal Circuit has also previously declined to exercise jurisdiction over an alleged trade secret misappropriation dispute, even though the party that allegedly misappropriated the trade secret later obtained a patent incorporating that trade secret. See Uroplasty, Inc. v. Advanced Uroscience, Inc., 239 F.3d 1277, 1279 (Fed. Cir. 2001). In Uroplasty, a former employee of Uroplasty, Inc. allegedly used the company's trade secrets to obtain a patent on certain technology. See id. The former employee represented that he was a co-inventor of the technology. Id. The Federal Circuit stated:

The only mention of a patent in Uroplasty's well-pleaded complaint are the allegations that Lawin used and divulged Uroplasty's trade secrets and confidential information by acts that included the preparation and filing of the application for the 406 patent and his involvement in the testing of urological bulking agents described in the patent. The 406 patent may be evidence in support of Uroplasty's allegations, but the mere presence of the patent does not create a substantial issue of patent law.

Id. The court went on to point out that "Uroplasty's claims for trade secret misappropriation require it to show that Lawin disclosed or used its trade secrets or confidential information, a burden that can be met without requiring the resolution of a substantial issue of patent law." Id.

To determine if federal law preempts Mr. Russo's claims in this case, "the key is whether the operation of state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" See Cyanamid, 342 F.3d at 1305 (quoting Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 479 (1974) (internal quotation marks and citation omitted)). Mr. Russo has not claimed that Defendants violated any patent laws and has not invoked any relief provided by those laws. Further, Mr. Russo does not seek to invalidate or otherwise alter the Ballard patents at issue. In short, property interests protected by federal patent law are not implicated in the present suit and federal patent law will therefore not operate to preempt the state law governing Mr. Russo's claims. Additionally, application of federal patent standards in

situations like those present here would only serve to encourage parties that misappropriate trade secret information to run to the patent office to drastically increase the applicable burden of proof should an injured party choose to seek judicial relief for the misappropriation, an undesirable result.

Accordingly, Defendants' Motion for Summary Judgment (All Counts) is DENIED.

## **V. Motions in Limine**

As indicated, in addition to the summary judgment motions just discussed, there are multiple motions in limine now pending before the court.

### *A. Motion to Exclude Evidence Relating to Mr. Russo's 1978 Resume*

In 1978, Mr. Russo falsely indicated on a resume that he received a Masters Degree in mechanical engineering from the University of Rhode Island. During his deposition, Defendants confronted Mr. Russo about his misrepresentation. Mr. Russo now requests an order precluding Defendants from questioning Mr. Russo about the misrepresentation and prohibiting the introduction of the resume into evidence. Defendants oppose the motion, arguing that the misrepresentation has substantial relevance to this case because it indicates that Mr. Russo has previously been willing to falsify information relating to his professional activities.

Rule 608 of the Federal Rules of Evidence provides that specific instances of conduct may "in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness." Fed. R. Evid. 608(b). But the allowance of such an inquiry is constrained by rule 403 of the Federal Rules of Evidence. See United States v. Leake, 642 F.2d 715, 718 (4th Cir. 1981) ("[Rule 608(b)] recognizes that the trial court must have discretion to apply the overriding safeguards of rule 403 . . ."). Rule 403 allows the court to exclude relevant evidence



if the probative value of the evidence “is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed. R. Evid. 403. In assessing the probative value of evidence covered by rule 608(b), courts consider (1) the importance of the witness’s credibility to the case, (2) whether the evidence is probative of other matters at issue in the parties’ larger dispute, (3) the similarity of the past specific conduct and the situation in which the witness is offering testimony, and (4) the remoteness of the specific act. See State v. Gomez, 2002 UT 120, ¶ 35, 63 P.3d 72 (citing 28 Charles Alan Wright & Victor James Gold, Federal Practice and Procedure: Evidence § 6118, at 94-96 (1993)).

While there is no doubt that Mr. Russo’s credibility is critical to the resolution of this case, the misrepresentation on his resume is markedly different from the key issue here: whether Mr. Russo would falsify documents, lie, and misrepresent facts to a court of law in an effort to claim ownership of an alleged trade secret. Also, Mr. Russo’s misrepresentation on his resume occurred nearly thirty years ago, which significantly diminishes the probative value of the misrepresentation to the present case. See Ad-Vantage Tel. Dir. Consults., Inc. v. GTE Dirs. Corp., 37 F.3d 1460, 1464-65 (11th Cir. 1994) (concluding that forgery accusation that occurred over twenty years in the past “was certainly too weakly probative to survive Rule 403's balancing test . . . . Temporally remote acts are only weakly probative of the witness’s current credibility . . . [and] the risk that the jury would place undue emphasis on it was great.”).

Because the probative value of Mr. Russo’s false statement on his 1978 resume is substantially outweighed by the possibility of unfair prejudice, Plaintiff Ronald D. Russo’s Motion In Limine to Exclude Evidence Concerning Russo’s 1978 Resume is GRANTED.

*B. Motion to Exclude Evidence Relating to the Interpretation of the Confidential Disclosure Agreement*

Mr. Russo requests an order prohibiting Defendants from introducing statements made by Mr. Russo addressing his understanding of the scope of the Confidential Disclosure Agreement. As previously discussed, when this case was before the U.S. District Court of Rhode Island, Mr. Russo argued that the Confidential Disclosure Agreement was not intended to apply to the disclosure of Drawing No. 4. After the U.S. District Court of Rhode Island ruled that the plain language of that agreement did encompass Drawing No. 4, Mr. Russo adopted that interpretation and now claims that Ballard breached the Confidential Disclosure Agreement by misappropriating Drawing No. 4.

Defendants oppose Mr. Russo's motion to exclude evidence of his initial understanding of the Confidential Disclosure Agreement by referencing their own motion for summary judgment concerning the scope of that agreement. Defendants claim that Mr. Russo's prior statements are admissible to aid in the interpretation of the Confidential Disclosure Agreement and evidence the parties' intent to not apply confidentiality protections to Drawing No. 4.

For reasons already discussed, Defendants are judicially estopped from arguing that the Confidential Disclosure Agreement does not apply to Drawing No. 4. Because evidence relating to Mr. Russo's initial understanding of the scope of that agreement are only relevant to further an argument that Defendants are judicially estopped from pursuing, it is proper to exclude such evidence. Further, admission of that evidence would unfairly prejudice Mr. Russo because it would tend to undermine the legitimacy of his claim that Ballard breached the Confidential Disclosure Agreement, a claim that Mr. Russo asserted in reliance on the analysis of the Confidential Disclosure Agreement provided by the U.S. District Court of Rhode Island.

Accordingly, Plaintiff Ronald D. Russo's Motion In Limine to Exclude Extrinsic

Evidence Concerning the Interpretation of the Confidential Disclosure Agreement is GRANTED.

*C. Motion to Exclude Testimony of Patent Attorney Bern S. Broadbent*

Mr. Russo requests an order precluding patent attorney Bern S. Broadbent from testifying as an expert witness. Mr. Russo claims that Mr. Broadbent's expert report (1) improperly weighs the evidence, (2) impermissibly purports to state what technical documents disclose and do not disclose, and (3) provides legal statements that are the proper province of the court.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999), require district courts to ensure that offered expert testimony is "not only relevant, but reliable," Daubert, 509 U.S. at 589. To adequately discharge this gatekeeping function, the court must "undertake whatever inquiry is necessary to 'make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.'" Smith v. Ingersoll-Rand Co., 214 F.3d 1235, 1243 (10th Cir. 2000) (quoting Kumho Tire, 526 U.S. at 152).

A significant portion of Mr. Broadbent's report states his legal conclusions regarding the applicability of federal patent law to Mr. Russo's claims and discuss whether Ballard had a legal duty to disclose the "prior art" of Mr. Russo when applying for the patents implicated in this case. But it is the task of the court to instruct the jury on the applicable law. See United States v. Vreeken, 803 F.2d 805, 809 (10th Cir. 1988) (stating that questions of law "are the subject of the court's instructions and not the subject of expert testimony"). Accordingly, Mr. Broadbent's opinion that federal patent law governs resolution of Mr. Russo's claims and his conclusions regarding the duty to disclose prior art will not be admitted into evidence.

Without additional information, the court is unable to rule on the admissibility of Mr.

Broadbent's testimony except as provided above. As a result, the court has scheduled a hearing at which Mr. Broadbent will appear so that the court may assess Mr. Broadbent's qualifications and hear the testimony that he intends to provide at trial. After that hearing, the court will be able to rule on the outstanding questions of admissibility.

Therefore, the court takes this motion under advisement and will issue a ruling on the matters not expressly addressed above after the scheduled hearing.

*D. Motion to Exclude Testimony of Gordon W. Lassen*

Defendants have indicated that they plan on calling Gordon W. Lassen to testify and demonstrate a variety of medical devices that are similar to the TrachCare 72, the device at issue in this case. Mr. Russo objects to the admission of testimony from Mr. Lassen on relevancy grounds to the extent that his testimony relates to products not directly implicated by Mr. Russo's claims. Mr. Russo also argues that the testimony should be excluded under rule 403 as more likely to confuse the jury than provide probative information.<sup>2</sup>

Daubert, 509 U.S. 579, and Kumho Tire, 526 U.S. 137, require district courts to ensure that offered expert testimony is "not only relevant, but reliable," Daubert, 509 U.S. at 589. To adequately discharge this gatekeeping function, the court must "undertake whatever inquiry is necessary to 'make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.'" Smith v. Ingersoll-Rand Co., 214

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<sup>2</sup>Mr. Russo also claims that Mr. Lassen's expert report was untimely and should be stricken. Mr. Lassen's report was served on the last day for rebuttal reports, and, admittedly, does not rebut any report submitted by Mr. Russo. But Mr. Russo had the opportunity to depose Mr. Lassen and it does not appear that any prejudice was caused by the potentially late submission of his report. Therefore, the court will not strike Mr. Lassen's report on timeliness grounds.

F.3d 1235, 1243 (10th Cir. 2000) (quoting Kumho Tire, 526 U.S. at 152).

Without knowing the extent of Mr. Lassen's expected testimony, a ruling on Mr. Russo's motion is inadvisable at this time. The court will set aside a time either before or soon after the trial in this matter is scheduled to begin and will hear the proposed testimony outside the presence of the jury. After hearing the testimony, the court will make an appropriate ruling. Until that time, this motion is taken under advisement.

*E. Motion to Exclude Evidence Relating to Nondisclosure of Prior Art Developed by Mr. Russo*

Through this motion, Defendants seek to preclude Mr. Russo from introducing evidence that Ballard failed to disclose "prior art" in its patent applications covering the TrachCare 72. Both Mr. Russo and an expert retained by Mr. Russo, Harry F. Manbeck, Jr., would testify that Ballard had a duty to disclose the prior art evidenced by one Mr. Russo's patents and that Drawing No. 4, if possessed by Ballard before the filing of their patent applications, should have similarly been disclosed.

Defendants argue that any nondisclosure of prior art is irrelevant to Mr. Russo's claims. Evidence of nondisclosure of prior art is typically confined to situations where a plaintiff is seeking to establish inequitable conduct. "Inequitable conduct occurs when a patentee breaches his or duty to the [United States Patent and Trademark Office ("PTO")] of candor, good faith, and honesty." Warner-Lambert Co. v. Teva Pharms. USA, Inc., 418 F.3d 1326, 1342 (Fed. Cir. 2005) (internal quotation omitted). "While inequitable conduct includes affirmative misrepresentations of material facts, it also arises when the patentee fails to disclose material information to the PTO." Ferring B.V. v. Barr Labs., Inc., 437 F.3d 1181, 1186 (Fed. Cir. 2006). "[Inequitable conduct] is a serious charge, and the effect is that an otherwise valid and invariably valuable patent is rendered unenforceable, for the charge arises only as a defense to patent

infringement.” Id. at 1195 (Newman, J., dissenting).

As already discussed, Mr. Russo has not challenged the validity of Ballard’s patents in any manner. But Mr. Russo contends that evidence concerning the nondisclosure is admissible under rule 404(b) of the Federal Rules of Evidence because the nondisclosure shows that Ballard had “intent” to misappropriate Mr. Russo’s trade secret and a “plan” to accomplish the misappropriation.

In support of his position, Mr. Russo cites Semiconductor Energy Laboratory Co. v. Samsung Electronics, Co., 4 F. Supp. 2d 477 (E.D. Vir. 1998). In that case, the court allowed evidence of inequitable conduct on the part of one party--in relation to a patent that was not directly challenged in the litigation--to support a claim that a different patent was invalid. Id. at 486-87. The court took pains to note that its conclusion that inequitable conduct rendered the challenged patent invalid was not based on evidence of inequitable conduct with regard to a related, unchallenged patent. Id. at 487 n.16. The court explained,

that conduct relating to the prosecution of the ’636 is the sole basis for a finding of inequitable conduct, but that conduct relating to the ’132 is relevant and probative as it provides important context, given the close relation of the patents and as it sheds light on the intent underlying the conduct relating to the prosecution of the ’636 patent.

Id.

Evidence of Ballard’s alleged nondisclosure of prior art satisfies the liberal relevancy requirement established by the Federal Rules of Evidence. Additionally, as was determined in Samsung, such evidence may be admitted under rule 404(b). But the probative value of the alleged misconduct is counterbalanced in large part by the possibility that introduction of such evidence will lead to “confusion of the issues,” “mislead[] the jury,” and has great potential to cause “undue delay” or otherwise waste time. See Fed. R. Evid. 403. This is especially the case

here, where the parties contest the extent of Ballard's duty to disclose prior art. Resolution of that dispute would force this proceeding into a collateral trial on what is invariably a complicated issue of patent law.

Delineating an exact line concerning evidence of nondisclosure that accounts for both relevancy and potential prejudicial effect is difficult outside of the context of a particular evidentiary offering. Accordingly, Defendants' Motion to Exclude Evidence and Argument Relating to the Nondisclosure of the '325 Patent is GRANTED, provided that during trial the court may allow properly confined questioning addressing this matter should the appropriate circumstance arise. In any event, any evidence of nondisclosure will be closely circumscribed to avoid the creation of confusion and to ensure that time is not wasted on a collateral issue.

*F. Motion to Strike the Expert Report of Mr. Russo and Preclude Him from Testifying as an Expert*

Mr. Russo has designated himself as an expert witness and has prepared an expert report in that capacity. Mr. Russo is apparently planning on testifying to four opinions that are outlined in his expert report. (See Expert Rep. of Ronald Russo 5, attached as Ex. 1 to Defs.' Mot. to Strike the "Expert" Rep. of Plf. Ronald D. Russo & Preclude Him from Testifying as an Expert.)

Defendants challenge each of Mr. Russo's opinions. Specifically, Defendants assert that Mr. Russo (1) attempts to interpret technical documents that the either the court should interpret or that speak for themselves; (2) opines about the probability that Ballard independently developed the allegedly misappropriated technology, even though Mr. Russo has not reviewed all of the documentation relating to Ballard's research and development process; and (3) provides a conclusory statement that one acknowledged distinction between Ballard's patent and Mr. Russo's trade secret is immaterial.

Daubert, 509 U.S. 579, and Kumho Tire, 526 U.S. 137, require district courts to ensure

that offered expert testimony is “not only relevant, but reliable,” Daubert, 509 U.S. at 589. To adequately discharge this gatekeeping function, the court must “undertake whatever inquiry is necessary to ‘make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.’” Smith v. Ingersoll-Rand Co., 214 F.3d 1235, 1243 (10th Cir. 2000) (quoting Kumho Tire, 526 U.S. at 152).

The court is unable at this time to provide a ruling without first being fully informed regarding Mr. Russo’s qualifications and the testimony he seeks to offer in court. As a result, the court has scheduled a hearing at which Mr. Russo will appear so that the court can make an appropriate assessment regarding admissibility and rule accordingly. Therefore, the court takes this motion under advisement and will issue a ruling after the scheduled hearing.

*G. Motion to Exclude Expert Opinion of Harry F. Manbeck*

The expert opinion of Mr. Manbeck is confined to a recitation of general patent law principles and an analysis of whether Ballard had a duty to disclose Mr. Russo’s prior art when pursuing its patents. As discussed in relation to the motion to exclude the testimony of Mr. Broadbent, it is the court that instructs the jury on the applicable law. See Vreeken, 803 F.2d at 809 (stating that questions of law “are the subject of the court’s instructions and not the subject of expert testimony”). Mr. Manbeck’s application of the law to the facts of this case is also inadmissible as a result of the court’s ruling regarding introduction of evidence relating to the duty to disclose prior art. Because the court will not allow this trial to be unduly sidetracked by the issue of whether Ballard’s conduct when prosecuting its patents was inequitable, the testimony of Mr. Manbeck on that point is irrelevant.

Accordingly, Defendants’ Motion to Exclude the Expert Opinions and Testimony of



Plaintiff's Expert Harry F. Manbeck is GRANTED.

*H. Motion to Exclude the Expert Opinion Offered by E. Robert Purdy*

Mr. Russo has designated E. Robert Purdy as an expert witness who will testify concerning the correlation between Mr. Russo's intellectual property and the Ballard patents that Mr. Russo alleges impermissibly incorporate that property. Defendants challenge Mr. Purdy's report and testimony on the ground that he is not adequately qualified to offer an expert opinion on the technology in issue, and claims that he merely mimics the conclusions already drawn by Mr. Russo, which amounts to improper bolstering.

Daubert, 509 U.S. 579, and Kumho Tire, 526 U.S. 137, require district courts to ensure that offered expert testimony is "not only relevant, but reliable," Daubert, 509 U.S. at 589. To adequately discharge this gatekeeping function, the court must "undertake whatever inquiry is necessary to 'make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.'" Smith v. Ingersoll-Rand Co., 214 F.3d 1235, 1243 (10th Cir. 2000) (quoting Kumho Tire, 526 U.S. at 152).

To address the objections to Mr. Purdy's testimony raised by Defendants, a Daubert hearing is necessary. The court has already scheduled the required hearing. Accordingly, this motion is taken under advisement, and the court will issue an appropriate ruling after Mr. Purdy appears and is examined at the hearing.

*I. Motion to Strike Expert Opinion of Richard Hoffman*

Defendants seek to exclude the expert opinion of Mr. Russo's damages expert, Richard Hoffman, on the ground that his damages calculation used a royalty rate that was based upon incorrect assumptions. Mr. Russo responds that Mr. Hoffman's report amounts to nothing more

than a calculation of how much money Ballard would have paid to Mr. Russo over the life of Ballard's subsequently obtained patent assuming a three-percent royalty rate on sales of Ballard's TrachCare 72 product,. Mr. Russo states that the report is nothing more than a pure mathematical calculation for the purposes of establishing a range for potential damages incurred by Mr. Russo and that it does not purport to designate a reasonable royalty rate using standards set forth in Georgia-Pacific Corp. v. United States Plywood Corp., 318 F. Supp. 1116 (S.D.N.Y. 1970).

Through the briefing, the parties have essentially reached an agreement that, so long as Mr. Hoffman's testimony is limited to a damages calculation that assumes a three-percent royalty rate, the testimony should be admissible. Mr. Russo has indicated that he will establish the propriety of the royalty rate through the introduction of other evidence. Therefore, Mr. Hoffman will be precluded from addressing whether that rate is reasonable. Accordingly Defendants' Motion to Strike Portions of the Expert Report of Richard Hoffman and to Exclude Portions of His Testimony is GRANTED in part and DENIED in part. Mr. Hoffman opinion will be excepted in accordance with the parameters outlined above.

### **Conclusion**

For the reasons set forth above:

- (1) Plaintiff Ronald D. Russo's Motion in Limine to Exclude Evidence Concerning Russo's 1978 Resume (dkt. # 117) is GRANTED.
- (2) Plaintiff Ronald D. Russo's Motion for Partial Summary Judgment that Drawing No. 4 Is Covered by the Confidential Disclosure Agreement (dkt. # 119) is GRANTED.
- (3) Defendants' Cross-Motion for Summary Judgment on Count II (dkt. #133) is

DENIED.

- (4) Defendants' Motion for Summary Judgment on Counts III and IV (dkt. # 140) is DENIED.
- (5) Defendant Kimberly-Clark Corporation's Motion for Summary Judgment (dkt. # 142) is DENIED.
- (6) Defendants Motion for Summary Judgment (All Counts) (dkt. # 144) is DENIED.
- (7) Plaintiff Ronald D. Russo's Motion In Limine to Exclude Extrinsic Evidence Concerning Interpretation of the Confidential Disclosure Agreement (dkt. # 149) is GRANTED.
- (8) Plaintiff's Motion to Preclude Expert Testimony from Patent Attorney Bern S. Broadbent (dkt. #171) is taken under advisement.
- (9) Plaintiff's Motion to Exclude Expert Testimony of Gordon W. Lassen (dkt. # 174) is taken under advisement.
- (10) Defendants' Motion to Exclude Evidence and Argument Relating to the Nondisclosure of the '325 Patent (dkt. # 184) is GRANTED to the extent provided above.
- (11) Defendants' Motion to Strike the "Expert" Report of Plaintiff Ronald D. Russo & Preclude Him from Testifying as an Expert (dkt. # 189) is taken under advisement.
- (12) Defendants' Motion to Exclude the Expert Opinions and Testimony of Plaintiff's Expert Harry F. Manbeck (dkt. # 196) is GRANTED.
- (13) Defendants' Motion to Strike the Expert Report of E. Robert Purdy and to Exclude His Testimony (dkt. 199) is taken under advisement.

(14) Defendants' Motion to Strike Portions of the Expert Report of Richard Hoffman and to Exclude Portions of His Testimony (dkt. # 201) is GRANTED in part and DENIED in part as outlined above.

(15) Motion to Strike (1) Declaration of J. Patrick Samsel and (2) Declaration of John W. Frey, Jr. (dkt. # 248) is GRANTED.

The court has set a hearing for August 14, 2006, at 9:00 a.m., to evaluate the objections to the testimony of Mr. Broadbent, Mr. Russo, and Mr. Purdy. After that hearing, the court will issue rulings on the motions taken under advisement in this order.

SO ORDERED this 10th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT  
2006 AUG 10 10 48 02

DISTRICT OF UTAH

STACY NELSON-WAGONER,

Petitioner,

v.

JERRY JORGENSEN,

Respondent.

BY: JS  
DEPUTY CLERK

Case No. 2:05-CV-248 DAK

District Judge Dale A. Kimball

**ORDER**

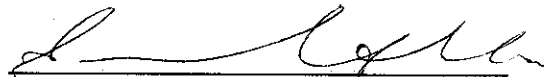
Magistrate Judge Samuel Alba

The Court has not heard from Petitioner since he first filed his petition on May 9, 2005.

IT IS THUS ORDERED that, within thirty days, Plaintiff must show cause why his complaint should not be dismissed for failure to prosecute.<sup>1</sup>

DATED this 8<sup>th</sup> day of August, 2006.

BY THE COURT:



SAMUEL ALBA  
U. S. Chief Magistrate Judge

<sup>1</sup>See Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).



FILED  
U.S. DISTRICT COURT

2006 AUG -9 P 2:12

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AUG 8 2006

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Fax: 415-538-2321

*Counsel for Defendant Jim Heiting*

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

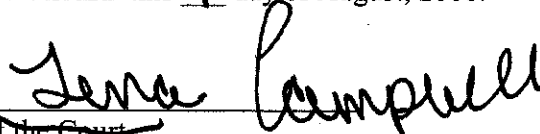
DANIEL E. WITTE,	)	
	)	ORDER GRANTING MOTION FOR
Plaintiff,	)	EXTENSION OF TIME FOR
	)	DEFENDANT HEITING'S RESPONSE
vs.	)	TO PLAINTIFF'S OBJECTION TO
	)	MAGISTRATES' REPORT AND
JIM HEITING, et al.,	)	RECOMMENDATION
	)	
Defendants.	)	Case No. 2:05cv-01046-TC-BCW
	)	

---

This matter comes before the Clerk of the Court on a stipulated motion of Defendant Jim Heiting to extend the time for his Response to Mr. Witte's *Objection to Report and Recommendation of Magistrate Wells* one week, from Friday, August 18, 2006, to Friday, August 25, 2006, in which to file his Response.

In accordance with Local Rule 77-2(4), the Clerk determines that the motion complies with the local rule, grants the motion and orders that Mr. Heiting's time for Response to this objection is hereby extended to Friday, August 25, 2006.

MADE AND ENTERED this 9 day of August, 2006.

  
Clerk of the Court



ROBERT B. SYKES (#3180)  
email: bob@sykesinjurylaw.com  
RYAN B. EVERSLED (#10842)  
email: ryan@sykesinjurylaw.com  
ROBERT B. SYKES & ASSOCIATES, P.C.  
311 South State Street, #240  
Salt Lake City, Utah 84111  
Telephone No. (801) 533-0222  
*Attorneys for Plaintiffs*

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

**AUG 10 2006**

MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

JASON WALL,

Plaintiff,

v.

OFFICER DAVID WIERMAN, OFFICER  
CHRISTINE HOUSLEY, JOHN and JANE  
DOES 1-15,

Defendants.

ORDER OF DISMISSAL WITH  
PREJUDICE

Civil No. 2:05CV01081


Judge Ted Stewart

Based upon the Joint Motion and Stipulation for Dismissal With Prejudice, and for good  
cause appearing, it is:

**HEREBY ORDERED, ADJUDGED, and DECREED** that all of Plaintiff's claims against  
all Defendants be dismissed with prejudice, each party to pay their own costs and fees.

DATED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Judge Ted Stewart  
District Court Judge

Jessica Stengel (#8915)  
VANCOTT, BAGLEY, CORNWALL & MCCARTHY  
50 South Main Street, Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84145-0340  
Telephone: 801-532-3333  
Facsimile: 801-534-0058

FILED  
U.S. DISTRICT COURT  
**RECEIVED**  
2006 AUG -9 P 2:12  
AUG 08 2006  
OFFICE OF  
JUDGE TENA CAMPBELL  
BY: [Signature]

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMIE FRIAS-FERNANDEZ, a/k/a  
JUAN FERNANDEZ CORONA, a/k/a  
JAMIE FRIAS-HERNANDEZ,  
Defendant.

**ORDER EXCLUDING TIME UNDER THE  
SPEEDY TRIAL ACT**

Case No. 2:06CR 00030 ~~DRW~~ TC

This matter was set for change of plea before Honorable Judge Campbell on August 7, 2006, at 2:00 p.m. The matter was reset for change of plea before Honorable Judge Campbell on August 10, 2006, at 4:30 p.m. The time between August 7, 2006 and August 10, 2006, shall be excluded from the computation of time required under the Speedy Trial Act pursuant to 18 U.S.C. § 3161 (h)(1)(F) and Rule 12.2(a) of the Federal Rules of Criminal Procedure.



THE HONORABLE TINA CAMPBELL  
Federal District Court Judge, District of Utah

8-9-2006

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

AUG - 9 2006

BY MARKUS B. ZIMMER, CLERK  
Utah DEPUTY CLERK

Central

District of

UNITED STATES OF AMERICA

V.

Michael McPherson

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000031-001

USM Number: 34060-013

Chelsea Koch

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1362	Destruction of Cable, Communication Lines, Stations or Systems		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/7/2006

Date of Imposition of Judgment



Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

8/9/06

Date

DEFENDANT: Michael McPherson  
CASE NUMBER: DUTX206CR000031-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Michael McPherson  
CASE NUMBER: DUTX206CR000031-001

## PROBATION

The defendant is hereby sentenced to probation for a term of :

36 months

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Michael McPherson  
CASE NUMBER: DUTX206CR000031-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant will submit to drug/alcohol testing as directed by the USPO. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.

DEFENDANT: Michael McPherson  
CASE NUMBER: DUTX206CR000031-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 1,566.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
The Bureau of Reclamation c/o Pat Tease 125 S. State Rm 6107 (UC-608) Salt Lake City, UT 84138	\$1,566.00		

TOTALS	\$ <u>1,566.00</u>	\$ <u>0.00</u>
--------	--------------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Michael McPherson  
CASE NUMBER: DUTX206CR000031-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 1,666.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Special Assessment Fee of \$100 is due immediately. The Restitution of \$1566.00 is due immediately and payable at a minimum rate of \$100 per month.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

**COLLEEN K. COEBERGH, 8052  
ATTORNEY AT LAW  
29 South State Street, #007  
SALT LAKE CITY, UTAH 84111  
TELEPHONE: (801)364-3300  
FACSIMILE (801)359-2892**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

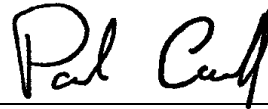
UNITED STATES OF AMERICA,  Plaintiff,  vs.  BRIAN KELLY BRUCE,  Defendant.	ORDER GRANTING DEFENDANT'S MOTION TO EXTEND DEADLINE TO SURRENDER TO SITUS OF INCARCERATION  Case No. 2:06CR00039PGC  Judge Paul G. Cassell
--	--

This matter having come before the Court upon Motion of the Defendant, Brian Kelly Bruce, for Extension of Time for him to be surrender himself to his facility of designation for service of his sentence, and the Court finding good cause therefore due to the fact that the Bureau of Prisons has been unable to timely designate him, it is hereby Ordered:

The Defendant shall surrender himself to the site designated by the Bureau of Prisons for

service of his sentence no later than noon, in the time zone of the site of his designation, August 28<sup>th</sup>, 2006.

Dated this 9th of August, 2006.

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style. The first name "Paul" is written with a large, open 'P' and the last name "Cassell" follows in a similar cursive script.

---

Paul G. Cassell  
United States District Judge  
District of Utah

# United States District Court District of Utah

FILED  
U.S. DISTRICT COURT

**UNITED STATES OF AMERICA**

**vs.**

**Igor Kapic**

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

2006 AUG -9 P 2:12

DISTRICT OF UTAH

Case Number: DUTX **2:06CR000042-002**

Plaintiff Attorney: **David Backman**

Defendant Attorney: **James Garrett**

Atty: CJA X Ret     FPD    

Defendant's Soc. Sec. No.: XXX-XX-5507

Defendant's Date of Birth: 1983

Defendant's USM No.: 13300-081

Defendant's Residence Address:

\_\_\_\_\_

Country \_\_\_\_\_

08/03/2006

Date of Imposition of Sentence

Defendant's Mailing Address:

\_\_\_\_\_

Country \_\_\_\_\_

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP 05/08/2006 Verdict           

### One of the Indictment

**Title & Section**

18 USC § 922(j)

**Nature of Offense**

Possession of a Stolen Firearm

**Count**

**Number(s)**

1

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

**10 Months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of

**36 Months**

☐ The defendant is placed on Probation for a period of \_\_\_\_\_.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug testing as directed by the probation office. If the defendant tests positive he shall participate in drug abuse treatment under a copayment plan as directed by the USPO and shall not possess or consume alcohol during the course of treatment, nor frequent business where alcohol is the chief item of order.
2. The defendant shall work regularly at a lawful occupation/vocation, or be actively seeking such employment,
3. If the defendant is not deported, he shall reside at the halfway house or community treatment center for 60 days.
4. If the defendant is deported, he shall not re-enter the United States illegally
5. Pursuant to 42 U.S.C. § 14135a and 10 U.S.C. § 1565, as authorized in Section 3 of the DNA Analysis Backlog Elimination Act of 2000 and Section 203 of the Justice for All Act of 2004, the defendant shall submit to the collection of a DNA sample at the direction of BOP or the United States Probation Office.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ NONE , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:

- 
- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00 , payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

### DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

**RECOMMENDATION**

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**The Court recommends the defendant serve his sentence at an appropriate level facility in Colorado.**

**CUSTODY/SURRENDER**

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE: Aug 9, 2006

Tena Campbell  
Tena Campbell  
United States District Judge

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal




FILED  
U.S. DISTRICT COURT

2006 AUG 19 4 8 02 PM

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH  
BY:   
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAUL GARCIA MACIAS,

Defendant.

**ORDER TO EXTEND DEFENDANT'S  
MEMORANDUM CUT-OFF DATE**

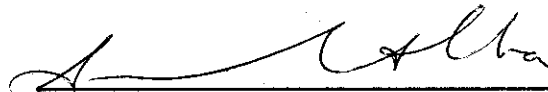
Case No. 2:06CR111 DAK

Chief Magistrate Judge Samuel Alba

Based upon the motion of the Defendant, Saul Garcia Macias, through his attorney of record, Carlos A. Garcia, the Court hereby continues defendant's memorandum cut-off date currently set for August 18, 2006, in the above-entitled matter until the 28<sup>th</sup> day of Aug., 2006, at 4:00 p.m.

Dated this 9<sup>th</sup> day of Aug., 2006.

BY THE COURT:



HONORABLE SAMUEL ALBA

United States District Court Chief Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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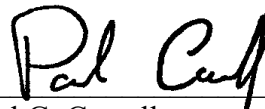
UNITED STATES OF AMERICA,	:	
Plaintiff,	:	ORDER OF RECUSAL
vs.	:	
DAVID M. WOLFSON, et al.,	:	Case No. 2:06-CR-00280 PGC
Defendant.	:	

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I recuse myself in this case, and ask that the appropriate assignment card equalization be drawn by the clerk's office.

DATED this 10th day of August, 2006.

BY THE COURT:



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Paul G. Cassell  
United States District Judge

# UNITED STATES DISTRICT COURT

Central

District of

UNITED STATES OF AMERICA

V.

Rodolfo Castillo-Navas

## JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 06CR000301-001

USM Number: 13600-081

L. Clark Donalson

Defendant's Attorney

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 09 2006

MARKUS B. ZIMMER, CLERK  
BY DEPUTY CLERK

### THE DEFENDANT:

☒ pleaded guilty to count(s) I - Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8USC§1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/7/2006

Date of Imposition of Judgment

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

Date

August 7, 2006

DEFENDANT: Rodolfo Castillo-Navas  
CASE NUMBER: DUTX 06CR000301-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

(TIME SERVED)

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rodolfo Castillo-Navas  
CASE NUMBER: DUTX 06CR000301-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Rodolfo Castillo-Navas

CASE NUMBER: DUTX 06CR000301-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States. The Court informs the dft of his right to appeal within 10 days of entry of judgment.

DEFENDANT: Rodolfo Castillo-Navas  
CASE NUMBER: DUTX 06CR000301-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Rodolfo Castillo-Navas  
CASE NUMBER: DUTX 06CR000301-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

UNITED STATES DISTRICT COURT

AUG 09 2006  
BY MARKUS B. ZIMMER, CLERK  
Utah DEPUTY CLERK

Central

District of

UNITED STATES OF AMERICA

V.

Alejandro Chavez-Lopez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 2:06CR000337-001

USM Number: 13638-081

Robert Hunt

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) I-Indictment

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8USC§1326	Re-Entry of Previously Deported Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/8/2006

Date of Imposition of Judgment

Dee Benson

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

8-7-2006

Date

DEFENDANT: Alejandro Chavez-Lopez  
CASE NUMBER: DUTX 2:06CR000337-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

TIME SERVED.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Alejandro Chavez-Lopez  
CASE NUMBER: DUTX 2:06CR000337-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Alejandro Chavez-Lopez  
CASE NUMBER: DUTX 2:06CR000337-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States.

DEFENDANT: Alejandro Chavez-Lopez  
CASE NUMBER: DUTX 2:06CR000337-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Alejandro Chavez-Lopez  
CASE NUMBER: DUTX 2:06CR000337-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document



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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UDK SOLUTIONS, INC. dba UTAH  
DISASTER KLEENUP, a Utah Corporation,  
and DISASTER KLEENUP  
INTERNATIONAL, INC., a Delaware  
Corporation

Plaintiffs,

vs.

DISASTER CLEAN UP SERVICE, LLC, and  
MOST WANTED CARPET CARE LLC,

Defendants.

PLAINTIFFS' AMENDED PROPOSED  
SCHEDULING ORDER AND ORDER  
VACATION HEARING

Civil Action No. 2:06CV00192 TS

Judge Ted Stewart

Magistrate Judge Paul M. Warner

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Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>i</sup> received the Amended Stipulated Attorneys' Planning Report filed by counsel on July 19, 2006. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for August 16, 2006, at 10:00 a.m. is VACATED.

\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\*

1.	PRELIMINARY MATTERS	DATE
a.	Was Rule 26(f)(1) Conference held?	Yes 7/10/06
b.	Has Attorney Planning Meeting Form been submitted?	Yes 7/17/06
	Amended Stipulated Attorney Planning Meeting Form submitted.	Yes 8/7/06
c.	Was 26(a)(1) initial disclosure completed?	Yes 7/28/06

2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	10
b.	Maximum Number of Depositions by Defendant(s)	10
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	7
d.	Maximum Interrogatories by any Party to any Party	35
e.	Maximum requests for admissions by any Party to any Party	Unlimited
f.	Maximum requests for production by any Party to any Party	35
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES <sup>ii</sup>	DATE
a.	Last Day to File Motion to Amend Pleadings	9/15/06
b.	Last Day to File Motion to Add Parties	9/15/06
4.	RULE 26(a)(2) REPORTS FROM EXPERTS <sup>iii</sup>	
a.	Parties with Burden of Proof	1/15/07
b.	Counter reports	2/15/07
5.	OTHER DEADLINES	
a.	Discovery to be completed by:	
	Fact discovery	11/17/06
	Expert discovery	3/16/07
b.	( <i>optional</i> ) Final date for supplementation of disclosures and discovery under Rule 26 (e)	45 days prior to trial
c.	Deadline for filing dispositive or potentially dispositive motions	4/14/07

6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION	DATE
a.	Referral to Court-Annexed Mediation:	No
b.	Referral to Court-Annexed Arbitration	No
c.	Evaluate case for Settlement/ADR on	1/2/07
d.	Settlement probability:	Low

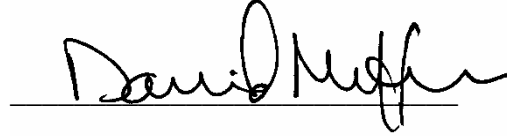
7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures <sup>iv</sup>		
	Plaintiff:		<u>7/13/07</u>
	Defendant:		<u>7/27/07</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		
c.	Special Attorney Conference <sup>v</sup> on or before		<u>8/10/07</u>
d.	Settlement Conference <sup>vi</sup> on or before		<u>8/24/07</u>
e.	Final Pretrial Conference	2:30 p.m.	<u>9/7/07</u>
f.	Trial	<u>Length</u>	
	i. Bench Trial		
	ii. Jury Trial	<u>3 days</u>	8:30 a.m. <u>9/17/07</u>

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this \_\_10th\_ date of \_\_August\_\_\_\_, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David M. Nuffer", is written over a horizontal line.

U.S. Magistrate Judge

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<sup>i</sup> The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

<sup>ii</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

<sup>iii</sup> A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

<sup>iv</sup> Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

<sup>v</sup> The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

<sup>vi</sup> The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

Denver C. Snuffer, Jr. (3032)  
Bret W. Reich (9542)  
**NELSON, SNUFFER, DAHLE & POULSEN, P.C.**  
10885 South State Street  
Sandy, Utah 84070  
Telephone: (801) 576-1400  
Fax: (801) 576-1960  
Attorneys for Defendants

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FILED  
U.S. DISTRICT COURT  
**RECEIVED**  
2006 AUG -9 P 2:12  
AUG 08 2006  
DISTRICT OF UTAH  
OFFICE OF  
JUDGE TENA CAMPBELL  
CLERK

IN AND FOR THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

ARGYLL EQUITIES, LLC, and SW  
ARGYLL INVESTMENTS, LLC;

Plaintiffs,

v.

CLARK REID POWELL, STAGECOACH  
PROPERTIES, LLC, AMERICAN RANCH  
PROPERTIES, LLC, AMERICAN EAGLE  
INVESTMENT COMPANY, LLC, B & L  
LAND TRUST, JOHN DOES 1 THROUGH  
10

Defendants.

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**ORDER NOT TO CONVEY,  
TRANSFER OR ENCUMBER THE  
CODY PROPERTY**

Civil No. 2:06CV00358 TC

Judge Tena Campbell

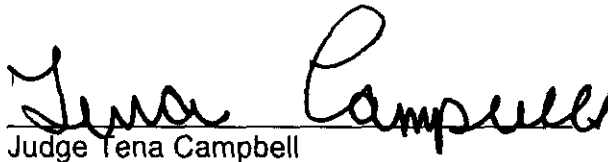
Pursuant to the stipulation of the parties and the Eagle I Land Trust, the Court hereby orders as follows:

1. Donald O. Steed, as trustee of the Eagle I Land Trust, which currently owns the Property, is not to transfer, convey or encumber the property located at 2341 West Cody Circle, Cedar City, Utah 84720 in any way, pending the final outcome of this proceeding or further order of this Court.

2. Plaintiffs' Motion For Prejudgment Writ of Attachment shall be held in abeyance pursuant to the stipulation of the parties.

DATED this 9 day of August, 2006.

United States Federal District Court

  
Judge Tena Campbell

Agreed as to form:

Ballard, Spahr Andrews & Ingersoll

/s/ Jason D. Boren

(Signed by Bret W. Reich with Permission of Plaintiffs' Attorney Jason D. Boren)

Anthony C. Kaye

Jason D. Boren

Nelson, Snuffer, Dahle & Poulsen

/s/ Bret W. Reich

Denver C. Snuffer, Jr.

Bret W. Reich

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

ARGYLL EQUITIES, LLC, and ARGYLL  
INVESTMENTS, LLC,

Plaintiffs,

vs.

CLARK REID POWELL, et al.,

Defendants.

ORDER

Case No. 2:06-CV-358 TC

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For the reasons set forth at the close of the August 10, 2006 hearing on Defendants Clark Powell's and American Eagle Investment Company's Motion to Dismiss Oral Loan Agreements, the Motion is DENIED.

IT IS SO ORDERED this 10th day of August, 2006.

BY THE COURT:



TENA CAMPBELL  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

---

CRAIG C. MILLS,  
Plaintiff,

v.  
MERVYN'S, LLC.

Defendant.

SCHEDULING ORDER AND  
ORDER VACATING HEARING

Case No. 2:06cv00404TS

District Judge Ted Stewart

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Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for August 16, 2006 at 10:00 a.m. is VACATED.

\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\*

- |    |  | DATE           |
|----|--|----------------|
| 1. | PRELIMINARY MATTERS  |                |
|    | Nature of claims and any affirmative defenses:   |                |
| a. | Was Rule 26(f)(1) Conference held?   | <u>08/2/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted?                                       | <u>Yes</u>     |
| c. | Was 26(a)(1) initial disclosure completed?   | <u>9/1/06</u>  |
| 2. | DISCOVERY LIMITATIONS  | NUMBER         |
| a. | Maximum Number of Depositions by Plaintiff(s)  | <u>5</u>       |
| b. | Maximum Number of Depositions by Defendant(s)  | <u>5</u>       |
| c. | Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>       |
| d. | Maximum Interrogatories by any Party to any Party  | <u>25</u>      |
| e. | Maximum requests for admissions by any Party to any<br>Party                             | <u>25</u>      |
| f. | Maximum requests for production by any Party to any<br>Party                             | <u>25</u>      |



3.	AMENDMENT OF PLEADINGS/ADDING PARTIES <sup>2</sup>		DATE
a.	Last Day to File Motion to Amend Pleadings		<u>10/16/06</u>
b.	Last Day to File Motion to Add Parties		<u>10/16/06</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS <sup>3</sup>		DATE
a.	Plaintiff		<u>05/18/07</u>
b.	Defendant		<u>06/30/07</u>
c.	Counter reports		<u>07/15/07</u>
5.	OTHER DEADLINES		DATE
a.	Discovery to be completed by:		
	Fact discovery		<u>05/18/07</u>
	Expert discovery		<u>08/15/07</u>
b.	(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)		<u>09/14/07</u>
c.	Deadline for filing dispositive or potentially dispositive motions		<u>08/06/07</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
a.	Referral to Court-Annexed Mediation:	<u>No</u>	
b.	Referral to Court-Annexed Arbitration	<u>No</u>	
c.	Evaluate case for Settlement/ADR on		<u>07/13/07</u>
d.	Settlement probability:		<u>Fair</u>
7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures <sup>4</sup>		
	Plaintiff		<u>10/26/07</u>
	Defendant		<u>11/9/07</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		

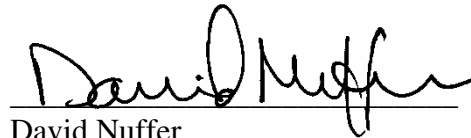
- |    |  |                  |                                |
|----|--|------------------|--------------------------------|
| c. | Special Attorney Conference on or before |                  | <u>11/23/07</u>                |
| d. | Settlement Conference on or before       |                  | <u>12/7/07</u>                 |
| e. | Final Pretrial Conference                | <u>2:30 p.m.</u> | <u>12/21/07</u>                |
| f. | Trial                                    | <u>Length</u>    |                                |
|    | Jury Trial                               | <u>3 Days</u>    | <u>8:30 a.m.</u> <u>1/7/08</u> |

8. OTHER MATTERS

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 9th date of August, 2006.

BY THE COURT:



David Nuffer  
U.S. Magistrate Judge

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<sup>1</sup> The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

<sup>2</sup> Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

<sup>3</sup> A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

<sup>4</sup> Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 10 2006

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

MARKUS B. ZIMMER, CLERK  
BY  
DEPUTY CLERK

University of Utah  
Plaintiff

v.

United States of America  
Defendant

:  
:  
:  
: ORDER FOR PRO HAC VICE ADMISSION  
:  
:  
:

: Case Number 2:06CV595 DAK

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of David N. Geier in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 10<sup>th</sup> day of August, 20 06.

Dale A. Knibball  
U.S. District Judge

NOT RECORDED

AUG 09 2006

FILED IN UNITED STATES DISTRICT  
U.S. DISTRICT COURT  
COURT, DISTRICT OF UTAH

**AUG 10 2006**

MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

RECEIVED CLERK

AUG 07 2006

FILED  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

2006 AUG -9 P 2:12

RECEIVED

CHRISTINE TORRES-MURPHY,  
Plaintiff

AUG 08 2006

ORDER FOR PRO HAC VICE ADMISSION

v.


OFFICE OF  
JUDGE TENA CAMPBELL

NORTHFACE UNIVERSITY, L.L.C.,  
n/k/a NEUMONT UNIVERSITY,  
Defendant

CASE NO. 2:06CV00625 TC

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Gabrielle D. Mead in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 9 day of Aug, 2006.

  
U.S. District Judge

FEE PAID

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED  
S. DISTRICT COURT

2006 AUG -9 P 2:12

CLERK OF DISTRICT COURT

WORLD HEALTH PRODUCTS, LLC, a  
Utah limited liability company,

Plaintiff,

vs.

CHELATION SPECIALISTS, LLC, a Utah  
limited liability company, RONALD  
PARTAIN, JR., an individual, RONALD  
PARTAIN, SR., an individual, PATRICK  
HAYES, an individual, and DOES 1 through  
5,

Defendants.

TEMPORARY RESTRAINING ORDER

Case No. 2:06 CV 633

Plaintiff World Health Products, LLC, has requested an order granting it temporary injunctive relief while it pursues a preliminary injunction against Defendants. The matter came before the court for a hearing on August 9, 2006. The court has considered the declarations and briefing submitted by the parties and also heard testimony from Defendant Patrick Hayes. After considering all relevant information, the court GRANTS World Health this Temporary Restraining Order.

At this preliminary stage in the proceedings, the evidence indicates that Defendants have used and are using information that was gained from World Health to market Defendants' own, competing, product. The information in question was kept secret by World Health and likely

constituted a trade secret. Defendants actions in relation to that information likely has and will continue to cause economic harm as well damage to the goodwill of World Health.

The court has scheduled a hearing for August 25, 2006, at 8:00 a.m., to address World Heath's request for a preliminary injunction. This Temporary Restraining Order will be in effect until the resolution of World Health's preliminary injunction request. The court will issue an oral ruling on that request at the conclusion of the preliminary injunction hearing. A written order will follow shortly thereafter. This Temporary Restraining Order will, therefore, be in effect for sixteen days. The record establishes that the extension of the term of this order from ten to sixteen days is justified by good cause considering the complexity of the issues to be addressed at the preliminary injunction hearing. Accordingly, until such time as the court offers its oral ruling, the court orders as follows:

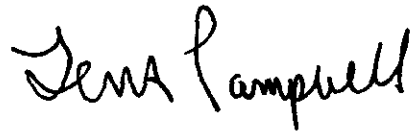
- (1) Defendants are prohibited from contacting any past or present customers of World Health in an effort to sell or otherwise discuss KeLATOX, the competing product being offered by Defendant Chelation Specialists, LLC.
- (2) Counsel for Defendants may contact past or present customers of World Health only for the purposes of investigating the claims forming the subject matter of this litigation.
- (3) Defendants are permitted to fill any orders for KeLATOX that have already been placed by Doctors' Health Centers and Vivigen, Inc., but are not permitted to contact those entities regarding future orders. Should Doctors' Health Centers or Vivigen, Inc. contact Defendants, Defendants are instructed to inform those entities that they are currently unable to fill orders for KeLATOX.
- (4) Defendants are prohibited from making any disparaging remarks about World Health, its products, or its management.

- (5) World Health is ordered to post a bond in the amount of \$1000.00 to serve as security should the court later conclude that Defendants have been wrongfully enjoined.

Given the foregoing, Defendants' Motion for Continuance is DENIED as moot.

DATED this 9th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge



**In the United States District Court**  
**for the District of Utah, Central Division**

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 10 2006

ROSS WILLIAMS, et. al.

Plaintiffs,

vs.

EUGENE LOVERIDGE, et. al.,

Defendants.

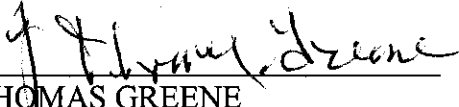
MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

ORDER OF RECUSAL

Case No. 2:06 CV 654

I recuse myself in this case, and ask that the appropriate assignment card  
equalization be drawn by the clerk's office.

DATED this \_\_\_\_ day of August, 2006.

  
\_\_\_\_\_  
J. THOMAS GREENE  
UNITED STATES DISTRICT JUDGE

AUG 10 2008 8:12 am

MARKUS B. ZIMMER, CLERK  
BY ~~DEPUTY CLERK~~IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

DIANE M. FRITZ,	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	
	)	
STATE OF UTAH et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	

---

Plaintiff/inmate, Diane M. Fritz, submits a *pro se* civil rights case.<sup>1</sup> Plaintiff applies to proceed without prepaying her filing fee.<sup>2</sup> However, Plaintiff has not as required by statute submitted "a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint . . . obtained from the appropriate official of each prison at which the prisoner is or was confined."<sup>3</sup>

IT IS HEREBY ORDERED that Plaintiff's application to proceed without prepaying her filing fee is granted.

So that the Court may calculate Plaintiff's initial partial filing fee, IT IS ALSO ORDERED that Plaintiff shall have thirty days from the date of this Order to file with the Court a certified copy of her inmate trust fund account statement(s). If

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<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915.

<sup>3</sup>See *id.* § 1915(a)(2) (emphasis added).

Judge Ted Stewart  
DECK TYPE: Civil  
DATE STAMP: 08/10/2006 @ 08:19:52  
CASE NUMBER: 2:06CV00657 TS

Plaintiff was held at more than one institution during the past six months, she shall file certified trust fund account statements (or institutional equivalent) from the appropriate official at each institution where she was confined. The trust fund account statement(s) must show deposits and average balances for each month. If Plaintiff does not fully comply, her complaint will be dismissed.

DATED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA  
United States Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED IN UTAH DISTRICT COURT, DISTRICT OF UTAH

AUG 10 2006 8:10am

RANDY THOMAS NAVBS,

Plaintiff,

v.

WIL CARLSON et al.,

Defendants.

MARKUS B. ZIMMER, CLERK

BY DEPUTY CLERK

Case No.

**O R D E R**

Plaintiff, Randy Thomas Naves, an inmate at Utah State Prison, submits a *pro se* civil rights complaint. See 42 U.S.C.S. § 1983 (2006). The filing fee is typically \$350. See 28 *id.* § 1914(a). However, Plaintiff asserts he is unable to prepay it. He thus applies to proceed without prepaying the filing fee and submits a supporting affidavit under section 1915(a). See *id.* § 1915(a).

The Court will allow Plaintiff to proceed without prepaying the entire filing fee. Even so, under section 1915(b)(1), Plaintiff must eventually pay the full \$350.00 fee required. See *id.* § 1915(b)(1). A plaintiff must typically start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint." *Id.* However, Plaintiff's inmate account records show he has no money; the Court thus waives his initial partial filing fee.

Judge Dee Benson  
DECK TYPE: Civil  
DATE STAMP: 08/10/2006 @ 08:20:48  
CASE NUMBER: 2:06CV00658 DB

Still, Plaintiff must complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Plaintiff may proceed without prepaying his filing fee and without paying an initial partial filing fee.

(2) Plaintiff must still eventually pay \$350.00, the full amount of the filing fee under 28 U.S.C. § 1915(b)(1).

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

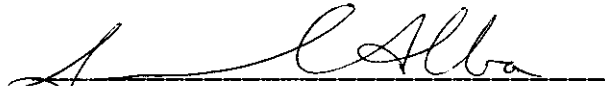
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in cursive script, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA

United States Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Randy Naves, understand that even when the Court grants my application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Randy Naves

FILED  
U.S. DISTRICT COURT

2006 AUG -10 ~~13~~ 02

Case No.

DISTRICT OF UTAH

100% CRYSTAL CLEAR

O R D E R

**CASE NUMBER: 2:06CV00659 TS**



complaint."<sup>5</sup> Under this formula, Plaintiff must pay \$6.05. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no way to pay it, the complaint will be dismissed.

So the Court may collect the remaining filing fee, Plaintiff must also within thirty days complete the attached "Consent to Collection of Fees" form, submitting the original to the inmate funds accounting office and a copy to the Court. Based on this consent form, Plaintiff's correctional institution will make monthly payments from Plaintiff's inmate account equal to twenty percent of each month's income.

Second, the Court considers Plaintiff's motion for appointed counsel. Plaintiff has no constitutional right to counsel.<sup>6</sup> The Court may, however, in its discretion appoint counsel for indigent inmates.<sup>7</sup> The applicant has the burden of showing that his claim has enough merit to justify the Court in appointing counsel.<sup>8</sup>

When deciding whether to appoint counsel, the Court studies a variety of factors, "including 'the merits of the litigant's

---

<sup>5</sup>*Id.*

<sup>6</sup>See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

<sup>7</sup>See 28 U.S.C.S. § 1915(e)(1) (2006); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

<sup>8</sup>*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).

claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"<sup>9</sup> Considering these factors, the Court concludes that (1) it is unclear at this time that Plaintiff has asserted a colorable claim; (2) the issues here are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motion for appointed counsel.

Third, the Court denies Plaintiff's motion for service of process. This motion is unnecessary because Plaintiff is proceeding *in forma pauperis*.<sup>10</sup> In such cases, "[t]he officers of the court *shall* issue and serve all process, and perform all duties in such cases."<sup>11</sup> The Court will screen Plaintiff's amended complaint at its earliest convenience and determine whether to dismiss it or order it to be served upon Defendants.<sup>12</sup> Plaintiff need do nothing to trigger this process.

IT IS THEREFORE ORDERED that:

(1) Plaintiff may proceed without prepaying his filing fee; however, he must eventually pay the full filing fee of \$350.00.

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<sup>9</sup>*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (citation omitted); accord *McCarthy*, 753 F.2d at 838-39.

<sup>10</sup>See 28 U.S.C.S. § 1915 (2006).

<sup>11</sup>See *id.* § 1915(d) (emphasis added).

<sup>12</sup>See *id.* § 1915A.

(2) Plaintiff must pay an initial partial filing fee of \$6.05 within thirty days.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office or other appropriate office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to his correctional institution's inmate funds accounting office and also submit a copy of the signed consent to this Court within thirty days from the date of this Order.

(6) Plaintiff's request for appointed counsel is denied; however, if, after the case is screened, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear *pro bono* on Plaintiff's behalf.

(7) Plaintiff's motion for service of process is denied; however, if, after the case is screened, it appears that this complaint states a claim upon which relief may be granted, the Court will order service of process.

DATED this 9<sup>th</sup> day of August, 2006.

BY THE COURT:



SAMUEL ALBA  
United States Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Ray Lynn Butterfield, understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is later dismissed.

I, Ray Lynn Butterfield, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$6.05, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

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Signature of Inmate  
Ray Lynn Butterfield

UNITED STATES DISTRICT COURT

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 10 2006

Central Division

District of

UTAH

MARKUS B. ZIMMER, CLERK  
BY

DEPUTY CLERK

Glen Christison

Plaintiff

V.

Jo Anne Barnhart,  
Commissioner Social Security Administration

Defendant

ORDER ON APPLICATION  
TO PROCEED WITHOUT  
PREPAYMENT OF FEES

Judge Dale A. Kimball

DECK TYPE: Civil

DATE STAMP: 08/10/2006 @ 10:36:59

CASE NUMBER: 2:06CV00660 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

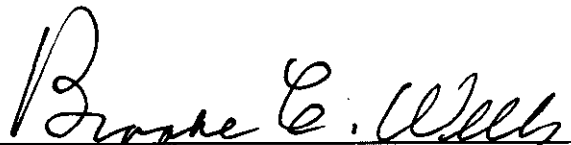
ENTER this

9

day of

August

2006

  
Signature of Judge

Magistrate Judge Brooke C. Wells

Name and Title of Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

2006 AUG -9 P 2:12

DISTRICT OF UTAH

CLERK

HENRY L. RUDOLPH,

Petitioner,

vs.

HANK GALETKA,

Respondent.

ORDER

Case No. 2:99 CV 371 TC

After lengthy proceedings, Mr. Rudolph has now filed a motion for relief of judgment under Federal Rule of Civil Procedure 60(b). As the voluminous procedural history of this case establishes, Mr. Rudolph's claims have been exhaustively reviewed not only by this court but by the state courts, as well as the Tenth Circuit Court of Appeals. At no time has any of these courts discovered grounds for relief and Mr. Rudolph has presented no new information that changes previous results. The motion for relief of judgment is therefore DENIED.

DATED this 9th day of August, 2006.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
United States District Judge